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Subcommittee on Judiciary.

Equality of the sexes.

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EQUALITY OF THE SEXES

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Rep. John Bell

Rep. Ann K. Regan

Rep. Bill Warfield

Sen. Antoinette Rosell, Vice-chairwoman

Sen. Paul Boylan

Sen. Jean Turnage

Participating Female Legislators
for
Equal Rights Determinations

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Rep. Ruth Castles

Rep. Ora Halvorson

Rep. Polly Holmes

Rep. Gail Stoltz

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RECOMMENDATIONS

The Subcommittee on Judiciary recommends:

(1) That in future recodification of Montana's laws, the use of masculine nouns, pronouns, and possessive pronouns, such as "chairman,""he," and "his," respectively, which include both men and women by law (Section 19-103, R.C.M. 1947) be eliminated. Sex-neutral words should be substituted wherever possible for those of the masculine gender while maintaining grammatical smoothness and clarity.

(2) The passage of the bills appearing in Appendix I by the 44th Legislature.

(3) That the ideas and concepts in the proposed "Uniform Parentage Act" (Appendix II) be further studied.

(4) That the proposed "Uniform Marriage and Divorce Act" (Appendix III) be further studied and eventually passed.

SENATE JOINT RESOLUTION NO. 68

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRIORITIES COMMITTEE TO ASSIGN TO AN INTERIM SUBCOMMITTEE A STUDY OF THE EXISTING LAWS OF THE STATE OF MONTANA IN ORDER TO DETERMINE WHAT CHANGES SHOULD BE MADE IN THESE LAWS IN ORDER TO ACHIEVE THE EQUALITY OF THE SEXES UNDER THE LAWS OF MONTANA, AND TO REPORT THEIR FINDINGS AND THEIR PROPOSALS FOR CHANGES IN THE LAW TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, article II, section 4, of the Montana constitution prohibits discrimination against any person in the exercise of his civil or political rights on account of sex, and

WHEREAS, the legislature intends to accomplish a thorough and well considered implementation of the 1972 constitution, and

WHEREAS, numerous statutes currently exist in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in terms of their rights and responsibilities under the law, and

WHEREAS, these statutes distinguishing between persons on the basis of sex are in many cases interrelated with many substantive laws and procedures necessary to the effective functioning of state and local government, and

WHEREAS, care and study are required to eliminate discriminatory provisions of the Revised Codes of Montana 1947, while preserving the essential features of these laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign a detailed study of the laws of the state of Montana to a subcommittee of the Joint Standing Committee of the House and the Senate on Constitution, Elections and Federal Relations to meet during the interim between the adjournment of the Forty-third Legislature and the beginning of the Forty-fourth Legislature, and

BE IT FURTHER RESOLVED, that this joint subcommittee conduct a study and thorough analysis of the statutes currently enacted in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in order to determine what changes should be made in these laws to achieve true legal equality of the sexes while preserving for all the people of Montana those essential protections which orderly government provides for its citizens, and

BE IT FURTHER RESOLVED, that the joint subcommittee report the results of its study and its recommendations for changes in the existing law together with proposed legislation to effect

these changes to the first regular session of the Forty-fourth Legislature.

HOUSE JOINT RESOLUTION NO. 62

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE APPOINTMENT OF SELECT COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES TO STUDY THE EXISTING LAWS OF THE STATE OF MONTANA IN ORDER TO DETERMINE WHAT CHANGES SHOULD BE MADE IN THESE LAWS IN ORDER TO ACHIEVE THE EQUALITY OF THE SEXES UNDER THE LAWS OF MONTANA, AND TO REPORT THEIR FINDINGS AND THEIR PROPOSALS FOR CHANGES IN THE LAW TO THE 1975 SESSION OF THE FORTY-FOURTH MONTANA LEGISLATURE.

WHEREAS, article II, section 4, of the Montana constitution prohibits discrimination against any person in the exercise of his civil or political rights on account of sex, and

WHEREAS, principles of democratic government and the proper respect due both sexes require that both the rights and responsibilities of citizenship be assumed equally by men and women, and

WHEREAS, numerous statutes currently exist in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in terms of their rights and responsibilities under the law, and

WHEREAS, these statutes distinguishing between persons on the basis of sex are in many cases interrelated with many substantive laws and procedures necessary to the effective functioning of state and local government, and

WHEREAS, care and study are required to eliminate discriminatory provisions of the Revised Codes of Montana 1947, while preserving the essential features of these laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Speaker of the House of Representatives is requested to appoint a select committee of five (5) members and that the Committee on Committees in the Senate is requested to appoint a select committee of five (5) members to meet jointly during the period between the close of the final session of the Forty-third Legislature and the opening of the first session of the Forty-fourth Legislature, and

BE IT FURTHER RESOLVED, that the respective select committees acting jointly conduct a study and thorough analysis of the statutes currently enacted in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in order to determine what changes should be made in these laws to achieve true legal equality of the sexes while preserving for all the people of Montana those essential protections which orderly government provides for its citizens, and

BE IT FURTHER RESOLVED, that the joint select committee report the results of its study and its recommendations for changes in the existing law together with proposed legislation to effect these changes to the Senate and the House of Representatives no later than 5 p.m. on the fifth legislative day of the 1975 session of the Forty-fourth Legislature.

INTRODUCTION

The 1972 Montana constitution includes in the Declaration of Rights, Article II, Section 4, a provision prohibiting discrimination by the state, a person, firm, corporation, or institution on account of race, color, sex, culture, social origin or condition, or political or religious ideas. The inclusion of sex in any equal protection or freedom from discrimination provision was determined to be "eminently proper" by the constitutional convention delegates.[1] The Committee on the Bill of Rights concluded that it saw no reason for the state to wait for the adoption of the federal equal rights amendment, or any amendment that would not explicitly provide as much protection as the Montana constitutional provision.[2] This section of the constitution was adopted unanimously by the delegates[3] and is one of the most inclusive provisions of its kind in that it prohibits private as well as public discrimination.

In response to the need for revision of Montana's laws to implement Article II, Section 4, the 1974 legislature passed two joint resolutions, HJR 62 and SJR 68, that requested a legislative committee to study existing laws to determine what changes were needed to achieve the equality of the sexes under the law while preserving the essential protections which the government necessarily provides for the people. The Committee on Priorities assigned the task to the Subcommittee on Judiciary, which was originally composed of Senators Glen Drake, Paul Boylan, and Jean Turnage and Representatives Dan Yardley (Chairman), Joe Roberts, Bill Warfield, and John Bell.

The subcommittee held its first meeting on May 3, 1974 at which the lack of female members was widely criticized. Following the meeting, Senator Drake and Representative Roberts resigned from the subcommittee, and Senator Antoinette Rosell and Representative Ann (Pat) Regan were appointed to fill the vacancies. The subcommittee decided that all women legislators should be notified of meetings, supplied with study materials, and invited to participate in all proceedings as voting members.

Public testimony that favored very careful study of revision that would greatly affect the lives of all citizens was taken on July 12 from various women's organizations and interested individuals.[4] Partly in response to that testimony, Chairman Yardley appointed a study group, including Senators Rosell (Chairwoman) and Boylan and Representatives Yardley, Warfield and Stoltz, to determine the direction in which the subcommittee should proceed. Five areas of law were identified as specifically needing revision: property, domestic relations, criminal, affirmative, and miscellaneous.

The study group was substantially in agreement on the direction that legislative efforts should take, and this consensus

facilitated the preparation and recommendation of the bills which are summarized in the following pages. The subcommittee adopted all the recommendations of the study group with the exception of the Uniform Marriage and Divorce Act and the Uniform Parentage Act, which were recommended for further study. (See recommendations, page iii.)

This report emphasizes the legislation discussed and recommended by the subcommittee, because it is on this area that the subcommittee study group and staff focused the major portion of their attention. Little time was spent on establishing goals or on fact-finding; the subcommittee's goals are embodied in the accompanying resolutions, and because of time and staff limitations, the efforts of other states and organizations were relied upon for determining facts supporting the need for the proposed legislation.

SUBCOMMITTEE DELIBERATIONS ON PROPOSED LEGISLATION

Beginning with computer (SIRS) searches of the statutes for existing sex discrimination, the study group and the council staff identified areas that needed both procedural and substantive amendments. Rather than suggesting immediate exhaustive changes in the use of masculine nouns, pronouns, and possessive pronouns such as "chairman," "he," and "his," respectively, which include both men and women by law (Section 19-103), the subcommittee recommends that in future recodifications or reenactments of the law, these types of words be changed to sex-neutral words wherever possible while still maintaining grammatical smoothness and clarity. This decision freed the study group from having to dwell primarily on cosmetic changes and enabled it to concentrate on more important substantive revision.

In addition to identifying through computer search areas needing revision of sex discriminatory language and policy, information was gathered from other states undertaking similar revisions and from the Commission on Uniform State Laws. These studies, legislation, and uniform laws were of particular importance in arriving at affirmative and domestic relations legislation that would effectively achieve the objectives of the subcommittee.

On September 14, the study group recommended fourteen bills and resolutions for consideration and approval by the subcommittee in fulfilling the requirements of HJR 62 and SJR 68. The full subcommittee voted to accept the recommendations of the study group and to recommend twelve of the fourteen bills presented by the study group in addition to one bill that was not part of the group's recommendations (Appendix I-13). Like the study group, the subcommittee was in substantial agreement on most bills

discussed. For this reason the subcommittee was able to prepare and recommend a number of bills covering several broad areas in a relatively limited amount of time.

The subcommittee was aware of the most common criticism of equal rights legislation: that equal rights for men and women would destroy the family and bring chaos to an orderly society and government. Because of this awareness, the overriding concern of the subcommittee was to draft legislation that would accomplish real sexual equality while encouraging stable and workable family and societal relationships.

Throughout the subcommittee proceedings, the legislators responded to the doubts and fears of many citizens by drafting legislation specifically protecting the rights of individuals who wish to assume traditional roles in the family and society. The subcommittee's reluctance to recommend two major domestic relations bills for passage without extensive further study is evidence of their concern.

In completion of its deliberations under HJR 62 and SJR 68, the Subcommittee on Judiciary recommends that the following described bills be enacted by the legislature. (See Appendix I for complete text.)

(1) LC 0006 - "An act to generally revise certain statutes which discriminate on the basis of sex in order to remove the discrimination" (omnibus bill).

(2) LC 0012 - "An act to repeal Sections 10-301 through 10-310, R.C.M. 1947, pertaining to apprenticing of minors."

(3) LC 0003 - "An act to change the laws relating to residence and domicile in order to remove sexual discrimination."

(4) LC 0009 - "An act to change the laws relating to husbands and wives in regard to their mutual obligations of support, control of their individual property and their ability to act as individuals, in order to eliminate sexual discrimination in such laws."

(5) LC 0008 - "An act changing the laws relating to homesteads in order to remove sexual discrimination from such laws."

(6) LC 0015 - "An act amending Sections 66-402 and 66-818, R.C.M. 1947, to further define the practice of barbering and cosmetology in non-sex-discriminatory terms."

(7) LC 0013 - "A joint resolution of the Senate and the House of Representatives of the state of Montana

requesting the Congress and the President of the United States of America to revise the federal laws relating to aid to dependent children in order to eliminate sexual discrimination in certain provisions."

(8) LC 0007 - "An act amending Sections 94-5-503 and 94-5-603, R.C.M. 1947, to remove certain sexual distinctions in the criminal law."

(9) LC 0004 - "An act prohibiting discrimination on the basis of race, color, religious creed, national origin, ancestry, age, sex or marital status in credit transactions."

(10) LC 0011 - "An act to be known as the 'Montana Code of Fair Practices'."

(11) LC 0005 - "An act to provide maternity leave to public and private employees."

(12) LC 0014 - "A joint resolution to make a comprehensive study of Montana's insurance laws to determine if they discriminate against an individual on the basis of sex."

(13) LC 0054 - "An act making it unlawful to patronize a prostitute."

The subcommittee, while not recommending the "Uniform Parentage Act" for passage in its present form by the legislature, supported its basic principles and concurred in the need for such legislation. The subcommittee acknowledged that legislation repealing Montana's bastardy laws, providing for custody of illegitimate children, and regulating support and custody of children conceived by artificial insemination was needed; however, the members were disturbed by provisions of the act that would require the mother of an illegitimate child to disclose the identity of the father in order that he be advised of his rights in regard to the child. Because of this concern, the subcommittee recommends this bill for extensive further study.

The subcommittee also recommends the "Uniform Marriage and Divorce Act" for further study. Since the area of law covered in the bill is vast, the subcommittee felt the bill should be studied extensively to insure its accuracy in meshing with Montana law. However, the subcommittee felt that the bill was basically sound and recommends it for eventual passage.

All the bills recommended and considered by the subcommittee are summarized in the following pages. They represent the body of the subcommittee's and staff's work and deliberations.

SUMMARY OF PROPOSED LEGISLATION

The following are brief summaries of each bill recommended and considered by the subcommittee. The summaries include an explanation of key points of the bills, possible areas of controversy, and the intent of the subcommittee.

OMNIBUS BILL (Appendix I-1) - The omnibus bill makes necessary but minor changes to eliminate discriminatory provisions in various sections of the law. This bill was adapted from previous 1974 draft bills LC 1961, 1994, and 1964 (which were not introduced) and makes necessary amendments to statutes not covered under the broader subject areas of other proposed legislation. The bill deals with extension of pension benefits to surviving spouses of either sex, the power of a mayor to call out all citizens to aid peace officers, the sexual composition of party committees, and other diverse subjects. Section 62 of the omnibus bill is particularly important as it provides a substitute for the cosmetic changes necessary throughout the statutes by defining the word "man" or "men" or a word which includes the syllable "man" or "men," such as "workmen," as including "woman" or "women" unless the statute is clearly and necessarily in reference to the male sex only. In this bill, the subcommittee also specified that the use of the masculine pronoun or possessive form used to modify sex-neutral words such as "person" or "spouse" be eliminated wherever possible as an example of its policy recommendation discussed above.

APPRENTICING OF MINORS BILL (Appendix I-2) - Instead of amending the sex-discriminatory provisions of Sections 10-301 through 10-310, R.C.M. 1947, which deal with apprenticing of minors, the subcommittee recommends repeal of the entire chapter as it is archaic and rarely applied. Section 10-302 specifically favors the authority of the father in consent to indenture of apprentices and would need to be amended if the chapter were not repealed.

RESIDENCE-DOMICILE BILL (Appendix I-3) - The proposed residence-domicile bill removes sexual discrimination from rules for determining residence and domicile. Within the provisions of this bill, the residence of a husband would no longer be presumptively the residence of the wife; nor must a wife legally conform to the residence chosen by her husband arbitrarily and without her consent. The bill specifically provides for the residence and domicile of a child as being that of his parents, or if one of them is deceased or they do not share the same residence, of the parent with whom he customarily resides. In case of a controversy, the court may declare which parental residence is the child's. These latter provisions were the result of the concern of many legislators over past attempts to remove sexual discrimination from residence-domicile laws which did not deal with the problem of the residence of a minor child.

INDIVIDUAL PROPERTY-DUTIES OF SUPPORT BILL (Appendix I-4) - In the property-support bill, the subcommittee has dealt with the problem of eliminating sexual discrimination from a husband's and wife's mutual duties of support, control of their individual property, and liability of their property for the expenses of their family. Under present Montana law, a husband must support his wife unless he is unable to do so. In the proposed bill, a husband and wife must support each other out of their property and labor, and support must include the nonmonetary support provided by a spouse as homemaker. The subcommittee intends this provision to effectively neutralize the fear that eliminating sexual distinctions from support laws would weaken the family and force the wife to work outside the home.

Where in existing Montana law only the wife is permitted to register her separate property, under this bill both spouses would be able to register their individual property, and individual property would not be liable for the debts of the other spouse except when the debt is for necessary articles of the family, or when creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse. Basically, this bill gives partners in a marriage the ability to act in financial matters as individuals while still maintaining their mutual obligations of support. A husband and wife would not be liable for each other's debts except for "necessary articles" for the use and benefit of the family.

HOMESTEAD-HEAD OF FAMILY BILL (Appendix I-5) - In this bill revising the homestead laws, a homestead could be selected by either or both spouses from the property of either spouse. The definition of "head of family" would be changed to include both spouses acting jointly, or whichever spouse undertakes a transaction for purposes of that particular situation.

BARBERS-COSMETOLOGISTS BILL (Appendix I-6) - In this bill, which further defines the practice of barbering and cosmetology in non-sex-discriminatory terms, the subcommittee attempted to deal with a difficult and controversial issue. The group decided that under the new constitution, barbers and cosmetologists must be able to offer all services of their vocation to persons of either sex. The bill simply adds a new section to the end of Title 66, Chapter 4, on barbering similar to that at the end of Title 66, Chapter 8, on cosmetology, which excludes barbers from having to fulfill the licensing requirements of cosmetologists. Thus members of either profession could perform services of their profession on persons of either sex without having to be licensed in both professions.

JOINT RESOLUTION ON AID TO DEPENDENT CHILDREN (Appendix I-7) - Through its study, the subcommittee determined that provisions of the aid to needy and dependent children section of the Public Welfare Act resulted in different eligibility standards for unemployed fathers than for mothers in receiving benefits. It was

determined, however, that Montana could not equalize these requirements without jeopardizing substantial federal funding for the programs, as federal law retains these discriminatory requirements. The subcommittee, in this joint resolution, requests the Congress of the United States to change federal statutes to permit equal eligibility requirements for both parents.

CRIMINAL LAW AMENDMENTS (Appendix I-8) - In removing certain discriminatory provisions of the criminal code in this bill, the subcommittee followed legislation utilized by other states which are undertaking similar efforts to remove sexual distinctions from their statutes. Although the definition of sexual intercourse in Montana law includes homosexual as well as heterosexual intercourse, the crime of sexual intercourse without consent, or rape, under current law can only be committed by a man against a woman who is not his spouse. With the adoption of this bill, a person of either sex could not commit sexual intercourse without consent against another person of either sex, equalizing the penalties for heterosexual and homosexual rape. The bill also substitutes the word "spouse" for "wife" in the section making it a crime to promote the prostitution of a person's wife.

A BILL PROHIBITING DISCRIMINATION IN CREDIT TRANSACTIONS (Appendix I-9) - This bill, which is entirely new legislation, would make it unlawful for any creditor to discriminate on the basis of race, color, religious creed, national origin, ancestry, age, sex or marital status against any person in any credit transaction including retail credit; business, educational, or mortgage loans; or installment credit. If a person is aggrieved by such discrimination in credit, he may file a complaint with the Commission for Human Rights or pursue private action in the courts. Twenty-two states have found it necessary to enact such "fair credit" laws as affirmative legislation in eliminating sexual discrimination.

CODE OF FAIR PRACTICES (Appendix I-10) - This bill provides for the employment of personnel by state and local government without regard to race, color, religious creed, sex, age, national origin, or ancestry. All aspects of state and local agency activity, including public contracts; recruitment, training, and promoting of employees; licensing; and public accommodations must be free from such discrimination. State and local governmental units and agencies, including school boards, must develop programs for insuring that affirmative action in these areas is carried out. This bill would in no way require a "quota system" for minorities in hiring or other agency activities. The subcommittee qualified the provision on age distinctions in section 12 with language from the federal "Age Discrimination in Employment Act of 1967," which exempts employers who enforce a differentiation based on age where age is a bona fide occupational qualification. Seniority and employee benefit plans are also exempt which are not a subterfuge to evade the purposes of the proposed act.

MATERNITY LEAVE BILL (Appendix I-11) - Under the provisions of this bill, it is unlawful for a public or private employer to terminate a woman's employment because of her pregnancy, to refuse to give to the employee a reasonable leave of absence for her pregnancy, or to deny her any disability or leave benefits accrued under plans maintained by her employer. Upon return at the end of her leave of absence, the employee must be reinstated with full pay, seniority, and benefits unless the private employer's circumstances have changed so as to make it impossible or unreasonable to do so. The aggrieved employee may seek administrative relief from the Commissioner of Labor and Industry, or she may seek private action in the courts.

JOINT RESOLUTION ON INSURANCE LAWS (Appendix I-12) - The subcommittee attempted to deal with possible discrimination in insurance laws but decided that the entire area needed further study. The subcommittee recommends that an appropriate standing committee be appointed to conduct this study of insurance laws and rates based on actuarial statistics to determine if such sexual discrimination exists and how it can be eliminated. The resolution requests that the study be conducted in consultation with the insurance industry and appropriate regulatory agencies and that the committee report its findings to the second session of the Forty-fourth Legislature.

A BILL MAKING IT UNLAWFUL TO PATRONIZE A PROSTITUTE (Appendix I-13) - This bill, which is expected by the subcommittee to be controversial, is presented in order to alleviate de facto discrimination against prostitutes who are usually female and who are penalized while their patrons are not. The bill applies to prostitutes and patrons of either sex and provides a minimal penalty to persons convicted of patronizing a prostitute. The study group and subcommittee discussed the possibility that Montana's prostitution laws are unconstitutionally discriminatory in view of several recent state court cases, but the issue was determined to be outside the purview of the subcommittee.

UNIFORM PARENTAGE ACT (Appendix II) - This bill, which was formulated by the Commissioners on Uniform State Laws in 1973, consists of entirely new legislation on the establishment and termination of the parent-child relationship. This type of legislation was necessitated by the U.S. Supreme Court decision Stanley v. Illinois, 405 U.S. 645 (1972) and subsequent lower court decisions which affirmed the rights of the father of an illegitimate child. As a result of these court decisions and the lack of adequate statutory provisions in Montana law to conform to them, adoptions of illegitimate children are in jeopardy of being invalidated. This legislation repeals Montana's bastardy laws and makes necessary amendments to the provisions of Montana law which allow only the mother of an illegitimate child to claim custody or to terminate her rights to the child. New procedures for determining parentage of a child and notification of possible fathers of that child are established. These notification procedures are the most controversial aspect of the bill, although

the court would have discretionary power to exercise them. If a man is determined to be the child's father, he may terminate his rights, or he may request custody of the child and contribute to the child's support. Fathers of illegitimate children will have rights equal to those of the mother and they may choose to exercise those rights or to terminate them.

UNIFORM MARRIAGE AND DIVORCE ACT (Appendix III) - This legislation was adopted by the Commission on Uniform State Laws in 1970 in response to the widespread demand for reform of divorce laws without undermining the state's interest in the stability of marriages. Because this legislation is written in terms of equal rights and obligations for both sexes and also provides needed reform of Montana's divorce and custody laws in a unified and concise manner, the subcommittee recommends this legislation rather than a piecemeal amendment of existing statutes. The provisions for licensing, solemnizing, and registering marriage are not substantially different from current Montana law. Common law marriages could still be recognized as under current Montana law. In its provisions for dissolution of marriage, this bill has totally eliminated the concept that divorce is a remedy granted to an innocent spouse, based on the marital fault of the other spouse which has not been connived at, colluded in, or condoned by the innocent spouse. Although in 1973 the provision of "irreconcilable differences" was added to the list of possible grounds for divorce in Montana, the usual "defenses" were left intact. Under the uniform law, the legal dissolution of a marriage may be based solely on a factual finding of "irretrievable breakdown" of a marriage. Provisions of the Montana Conciliation Law are retained. Neither fault nor sexual distinctions are determining factors in maintenance and property division under this bill. In determining of property and deciding whether one spouse should supply maintenance payments to the other, the court must consider several factors including the age and health of the spouse and his ability to support himself, the duration of the marriage, the contribution of the spouse as homemaker, whether custody of a child whose age or other circumstances make it appropriate that the custodian not work outside the home, the standard of living established during the marriage, and other relevant factors. Child support and custody determinations are also made without fault or sexual preference. The best interest of the child is the determining factor in all proceedings under this proposed act. Provisions are made to safeguard the well-being of the child and to minimize the adversary nature of the proceedings.

FOOTNOTES

[1] Montana Constitutional Convention, Transcript of Proceedings, Vol. VII, p. 5060.

[2] Ibid.

[3] Montana Constitutional Convention, Transcript of Proceedings, Vol. XI, p. 8034.

[4] Those people testifying at the July 12 meeting included:

Mary Munger
Advisory Council on the Status of Women

Joan Uda
N.O.W. and Women's Caucus of the Student Bar Association, University of Montana

Natalie Cannon
American Association of University Women

Virginia Blend
Constitutional Convention delegate

Audrie Deligdisch
Great Falls ERA Ratification Council

Evalyn Schallaire-Harney

Audrey Peterson
Montana Home Economics Association

Janet Stevenson
Montana Federation of Women's Clubs

Pat Blend
State ERA Ratification Council

[5] States whose laws and reports were used as references include:

Wisconsin
Connecticut
Washington
New Mexico
Oklahoma
South Dakota
Kentucky
Maryland
Minnesota
Massachusetts

SOURCE MATERIAL DISTRIBUTED TO THE SUBCOMMITTEE

Brown, Barbara A., et al., "The Equal Rights Amendment, A Constitutional Basis for Equal Rights for Women", Yale Law Journal, Vol. 80, April 1971.

Citizens' Advisory Council on the Status of Women, U.S. Department of Labor, Recognition of Economic Contribution of Homemakers and Protection of Children in Divorce Law and Practice, Washington, D.C., 1974.

_____, The Equal Rights Amendment and Alimony and Child Support Laws, Washington, D.C., January 1972.

Council of State Governments, "All Are Created Equal (The States and The Equal Rights Amendments)", Lexington, Kentucky, 1972.

Gates, Margaret J., "Credit Discrimination Against Women: Causes and Solutions", Vanderbilt Law Review, Vol. 27, April 1974.

Haft, Marilyn G., "Hustling for Rights", The Civil Liberties Review, Winter/Spring, 1974.

National Conference of Commissioners on Uniform State Laws, "Uniform Marriage and Divorce Act", 1971.

_____, "Uniform Parentage Act", 1973.

SIRS, Computer key-word searches of the Revised Codes of Montana, 1947. Key words: woman, women, female, females, boys, girls, mother's, mother-in-law, sister-in-law, sisters, fathers, father's, father-in-law, brother-in-law, brothers, grandmother, grandfather, husband's, husbands, wife's, wives, women's, men's, man's, uncle(s), aunt(s), niece(s), nephew(s), grandson(s), ladies, gentlemen, head of family, sister, brother, mother, father, separate property, widow(s), widow's, widower, man, men, male, males, husband, wife.

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE CERTAIN STATUTES WHICH DISCRIMINATE ON THE BASIS OF SEX IN ORDER TO REMOVE THE DISCRIMINATION; AMENDING SECTIONS 11-802, 11-1821, 11-1911, 11-1915, 11-1927, 11-1928, 11-2025, 11-3112, 11-3215, 16-2702, 17-604, 17-607, 23-3405, 23-4727, 23-4728, 35-409, 39-108, 39-109, 39-113, 40-3312, 40-4902, 40-5305, 41-1119, 41-1506, 45-511, 45-603, 45-308, 59-519, 63-107, 63-402, 64-209, 67-903, 67-904, 67-1603, 71-120, 72-617, 72-618, 75-8701, 77-501, 77-1002, 80-1801, 80-1803, 84-301, 84-3206, 91-1304, 92-707, 92-1303, 92-1321, 93-2803, 93-2804, 93-2807, 93-2808, 93-2809, 93-4207, 93-4707, 93-5834, 93-5836, 93-6711, 93-9706, 93-100-2, 95-609, R.C.M. 1947, AND CREATING A NEW SECTION 12-216, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-802, R.C.M. 1947, is amended to read as follows:

"11-802. Powers of mayor. The mayor is the chief executive officer of the city or town, and has power:

1. To nominate, and, with the consent of the council, to appoint all nonelective officers of the city or town,

provided for by the council, except as provided in this title.

2. To suspend, and, with the consent of the council, to remove any nonelective officer, stating in the suspension or removal the cause thereof.

3. To cause the ordinances of the city or town to be executed, and to supervise the discharge of official duty by all subordinate officers.

4. To communicate to the council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city or town, with such recommendations as ~~he~~ the mayor may deem proper.

5. To recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town, and the improvement of the government and finances, as ~~he~~ the mayor deems expedient.

6. To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet ~~his~~ the mayor's approbation, to return the same to the next regular meeting of the council, with ~~his~~ all objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

7. To veto any objectionable part of a resolution or

ordinance, and approve the other parts. If the mayor fail to return any resolution or ordinance as aforesaid, the same takes effect without further action.

8. To call special meetings of the council, and when so called ~~he~~ the mayor must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

9. To cause to be presented, once in three months, a full and complete statement of the financial condition of the city or town.

10. To bid in for the city or town any property sold at a tax or judicial sale, where the city or town is a party or interested.

11. To procure and have in ~~his~~ the mayor's custody the seal of the city or town.

12. To take and administer oaths.

13. To call on every ~~male~~ citizen of the city or town, over the age of eighteen years, to aid in the enforcement of the laws and ordinances in case of riots; to call out the militia to aid ~~him~~ the mayor in suppressing the same or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or for carrying into effect any law or ordinance; and any person who does not obey such call forfeits to the city or town a fine not exceeding twenty-five dollars.

14. To require of any of the officers of a city or town an exhibit of ~~his~~ such officer's books and papers.

15. To grant pardons and remit fines and forfeitures for offenses against city or town ordinances, when in ~~his~~ the mayor's judgment public justice would be thereby subserved; but ~~he~~ the mayor must report all pardons granted, with the reasons therefor, to the next council.

16. To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

17. ~~He has~~ To exercise such power as may be vested in ~~him~~ the mayor by ordinance of the city or town, in and over all places within five miles of the boundaries of the city or town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof."

Section 2. Section 11-1621, R.C.M. 1947, is amended to read as follows:

"11-1621. Payment of police reserves. (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of the city or town, ~~he~~ such person shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in

any one month during the last year of active service; provided that after completing twenty (20) years or more of active service if a policeman or officer elects to serve an additional one (1) to ten (10) years then the payment from the police reserves fund shall be increased at the rate of one per cent (1%) per year of additional service up to a maximum of sixty per cent (60%) of the last year's average salary received as a monthly compensation for services as an active member of the police department.

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, ~~his~~ the surviving dependent ~~widow, if there be such a surviving widow~~ of the policeman or officer, shall, as long as ~~she remains his his widow~~ such spouse does not remarry, be paid, from the police reserves' fund, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave ~~he~~ the decedent was receiving as an active officer computed on the highest salary received in any one month during the last year of active service prior to the date of ~~his demise~~ death or prior to the date the policeman or officer passes to the police reserve list. No surviving ~~widow~~ spouse shall be entitled to payments under the provisions of this act ~~if she be~~ who is fifteen (15) years younger than ~~her husband~~ the deceased spouse, unless ~~she~~ he shall have been married to and living with ~~her~~

~~husband~~ the deceased spouse for ten (10) years immediately preceding his death. If the policeman or officer leaves a dependent minor child, or dependent minor children, then upon the death of the policeman or officer, providing ~~he leaves~~ there is no surviving ~~widow~~ spouse, or upon the death or remarriage of ~~his widow~~ the surviving spouse, or if ~~his widow~~ the surviving spouse be fifteen (15) years younger than ~~her husband~~ the decedent and shall not have been married to and living with ~~her husband~~ the decedent for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one (1) dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving ~~widow~~ spouse, until the minor child, or minor children, reach the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the beneficiaries shall not be made if the payments require an increase in the millage tax levy provided by section 11-1823, R.C.M. 1947.

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of the child or children, for the use of the minor, until the minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor

child, upon each child reaching the age of eighteen (18) years the prorata payments to the child shall cease and shall be made to the remaining minor child or children until the youngest child reaches the age of eighteen (18) years or is married.

(4) The term "policeman," or "police officer," includes all those on the reserve list, as well as "active police," "police officer," and "patrolman," or any of those terms.

(5) Before any payments are made to any member of the police reserve, the governing body of the city shall, forthwith, determine the eligibility of such member for payments and the amount thereof in accordance with the terms of this section."

Section 3. Section 11-1911, R.C.M. 1947, is amended to read as follows:

"11-1911. Source of fund. The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments or donations given or paid to such fund, or any of its members, except as otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each paid member and part-paid member of said fire department relief association amounting to six per cent (6%) of ~~his~~ the member's regular monthly salary, the proceeds of a tax levy

as provided by section 11-1912, R.C.M. 1947, and all moneys received from the state of Montana as provided for by section 11-1919, R.C.M. 1947, and the interest of any portion of such fund.

Any such paid or part-paid fireman shall be entitled to a return, in lump sum, without interest, of all monthly contributions made by ~~him~~ the fireman to such funds, within sixty (60) days of ~~his~~ permanent separation from service in the fire department of such city, town or municipality, except for separation by reason of retirement, death or disability, which would otherwise qualify such separated fireman, ~~his widow~~ the surviving spouse or orphans, to benefits or allowances from such fire department relief association."

Section 4. Section 11-1915, R.C.M. 1947, is amended to read as follows:

"11-1915. Benefits, allowed for, how allowed, and how paid. Every fire department relief association may allow to its members benefits for the following causes, as provided by law.

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. To a member who has become maimed or disabled for life in line of duty.

3. To a member who has suffered injury in line of

duty.

4. To a member who has contracted sickness in line of duty.

5. Funeral expenses of a member.

6. Pensions to the ~~widow~~ surviving spouse, orphan or orphans of a deceased member.

All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance and claimant shall have the right to appeal to the association in the event ~~his~~ the claim be disallowed. All claims shall be paid by warrant, duly authorized, drawn by the secretary, and countersigned by the president of the association, and on presentation thereof, the treasurer of the association shall pay the same out of the said pension and disability fund."

Section 5. Section 11-1927, R.C.M. 1947, is amended to read as follows:

"11-1927. Pensions to ~~widows~~ surviving spouses and orphans. Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the ~~widow~~ surviving spouse or orphans of a deceased member of said association, who, on the date of ~~his decease~~ death, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire

department and receive a "service pension" as provided for by section 11-1925, or prior to ~~his decease~~ death had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half (1/2) of the monthly compensation last received by such deceased member for ~~his~~ services rendered as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to a ~~widow~~ surviving spouse or orphan of an active member who becomes deceased after July 1, 1973, or an active member who elects to retire after July 1, 1973, shall in no event become less than one-half (1/2) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that

city. Provided, that said pension shall be paid to the within named ~~widow~~ surviving spouse only so long as ~~she~~ such spouse remains unmarried, and further provided, that a ~~widow~~ surviving spouse of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five ($75) dollars per month."

Section 6. Section 11-1928, R.C.M. 1947, is amended to read as follows:

"11-1928. Use of disability and pension fund of fire department relief association. Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. A pension to a member who has become permanently

maimed or disabled in line of duty.

3. A benefit or allowance to a member who has suffered a permanent disabling injury in line of duty.

4. A benefit or allowance to a member who has contracted a permanent disabling sickness in line of duty.

5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of seven hundred fifty dollars ($750).

6. Payment to the ~~widow~~ surviving spouse, orphan or orphans of a deceased member as provided by law.

7. The payment of premiums upon a blanket policy of insurance covering the members of such fire department and providing for payment of compensation in case of death or injury to such member or any of them.

8. The return of employee contribution as provided by law.

9. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund."

Section 7. Section 11-2025, R.C.M. 1947, is amended to read as follows:

"11-2025. Payment of a claim -- beneficiaries of decedent. 1. Upon receipt of a claim under subparagraphs

one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any otherwise qualified volunteer fireman before reaching the age of fifty-five (55) years, or in the event of the death of any such volunteer fireman after ~~he has--qualified~~ qualifying for payments hereunder but before ~~he has received~~ receiving payments hereunder totaling at least two thousand dollars ($2,000); and if such deceased volunteer fireman shall have left a ~~widow~~ surviving spouse, then such pension shall be paid or continue to be paid to ~~said widow~~ the surviving spouse by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of ~~said widow~~ the surviving spouse, until ~~her~~ such spouse's death or remarriage; or if said deceased volunteer

fireman shall have left no ~~widow~~ surviving spouse but shall have left a child or children under the age of eighteen (18) years, then such pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for ~~his widow~~ a surviving spouse or children, then such pension shall terminate, and no further payments shall be made hereunder, when a total of two thousand dollars ($2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death. If such deceased volunteer fireman shall leave neither ~~widow~~ surviving spouse nor child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs."

Section 8. Section 11-3112, R.C.M. 1947, is amended to read as follows:

"11-3112. Nomination of candidates--primary election. (1) Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner

hereinafter prescribed. The primary election for such nominations shall be held on the second Monday preceding the municipal election. The judges of election appointed for the municipal election shall be the judges of the primary election, and it shall be held at the same places, as far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

(2) Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or councilman, shall, at least ten days prior to said primary election, file with the city clerk a statement of such candidacy in substantially the following form:

State of Montana,

County of ....

I, ..., being first duly sworn, say that I reside at .... street, city of ...., county of .... state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the .... Monday of ...., 19.., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) ....

Subscribed and sworn to (or affirmed) before me by .... on this .... day of ...., 19...

(Signed) ....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition accompanying nominating statement.

The undersigned, duly qualified electors of the city of ...., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed in the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the .... Monday of ...., 19... We further state that we know him to be a qualified elector of said city and a man of good moral character, and qualified, in our judgment, for the duties of such office.

Names of qualifying electors. Number. Street.

.....

.....

(4) Each signer of a nomination paper shall sign but one such nomination paper for the same office, except where

more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected, and only one candidate shall be petitioned for or nominated in the same nomination paper.

(5) Immediately upon the expiration of the time of filing the statements and petitions for candidates, the said city clerk shall cause to be published for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words, "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for (giving the number of persons to be voted for)." The ballot shall be printed upon plain substantial, white paper, and shall be headed:

Candidates for nomination for mayor and councilmen of

the city of .... at the

Primary Election;

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form: (Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions).

Official Primary Ballot.

Candidates for nomination for mayor and councilmen of the city of .... at the

Primary Election.

For Mayor.

(Name of candidate.)

(Vote for one.)

For councilman.

(Name of candidate.)

Vote for ....(Giving number to be voted for).

Official ballot attest:

(Signature)....

City Clerk.

(6) Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such

primary election and any person offering to vote may be orally challenged by any elector of the city upon any or all of the grounds set forth and specified in section 23-1220 of these codes, and the provisions of sections 23-1221 to 23-1226, inclusive, of these codes shall apply to all challenges made at such election. Judges of election shall immediately upon the closing of the polls count the ballots and ascertain the number of votes cast in such precinct for each of the candidates for mayor and councilman, and make return thereof to the city clerk upon the proper blanks to be furnished by the city clerk within six hours of the closing of the polls. On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said city, at least once, the result thereof. Said canvass by the city clerk shall be publicly made.

(7) If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. If two councilmen are to be elected at such general municipal election, the four persons receiving the highest number of votes shall be the

candidates for councilmen, and if three councilmen are to be elected at such municipal election, the six persons receiving the highest number of votes shall be the candidates for councilmen, and if four councilmen are to be elected at such general municipal election, the eight persons receiving the highest number of votes shall be candidates for councilmen at such general election, and these shall be the only candidates for mayor and councilmen at such general election.

(8) All electors of cities under this act, who, by ordinances governing cities incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable, and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as by law provided for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this act.

(9) Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and

file with the city clerk ~~his~~ an oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of ~~his~~ the office, which bond shall be approved by the judge of the district court of the county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated."

Section 9. Section 11-3215, R.C.M. 1947, is amended to read as follows:

"11-3215. Nomination of candidates--primary election. (1) Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least thirty-five (35) days prior to said primary election, file with the clerk of

the commission a statement of such candidacy in substantially the following form:

State of Montana,

County of ....

I,...., being first duly sworn, say that I reside at .... street, (city or town) of ...., county of ...., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19.., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) ....

Subscribed and sworn to (or affirmed) before me by .... on this .... day of ...., 19..

(Signed) ....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city,

town) of...., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19... We further state that we know nim/her to be a qualified elector of said (city, town), and a ~~man~~ person of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors Number Street

(Space for Signatures.)

State of Montana,

County of ....

...., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed) ....

Subscribed and sworn to before me this .... day of ...., 19...

.... (Notary Public),

This petition, if found insufficient, shall be returned to .... at No. .... street, ..., Montana.

(4) Immediately upon the expiration of the time of filing the statements and petition for candidates, the clerk of the commission shall cause to be published for three consecutive days in all the daily newspapers published in the municipality in proper form, the names of the persons that are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said municipality, and the said clerk shall thereupon cause the primary ballots to be printed and authenticated with a facsimile of his signature.

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot."

Section 10. Section 16-2702, R.C.M. 1947, is amended to read as follows:

"16-2702. Duties of sheriff. The sheriff must:

1. Preserve the peace;

2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or have committed a public offense;

3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

4. Perform duties of humane officer within ~~his~~ the county with reference to the protection of dumb animals;

5. Attend all courts, except justices and police courts, at their respective terms or sessions held within ~~his~~ the county, and obey their lawful orders and directions;

6. Command the aid of as many ~~male~~ inhabitants of his county as he may ~~think~~ be necessary in the execution of these duties;

7. Take charge of and keep the county jail and the prisoners therein;

8. Endorse upon all notices and process the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

9. Serve all process or notices in the manner prescribed by law;

10. Certify ~~under his hand~~ in writing upon the process of notices the manner and time of service, or, if he fails

to make service, the reasons of ~~his~~ this failure, and return the same without delay."

Section 11. Section 17-504, R.C.M. 1947, is amended to read as follows:

"17-504. Injuries inflicted in a duel -- support of family of injured person. If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the ~~widow or wife~~ spouse of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court."

Section 12. Section 17-807, R.C.M. 1947, is amended to read as follows:

"17-807. What cannot be specifically enforced. The following obligations cannot be specifically enforced:

1. An obligation to render personal service, or to employ another therein;

2. An agreement to marry or live with another;

3. An agreement to submit a controversy to arbitration;

4. An agreement to perform an act which the party has not power to perform lawfully when required to do so;

5. An agreement to procure the act or consent of the

~~wife~~ spouse of the contracting party, or of any other third person; or

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 13. Section 23-3405, R.C.M. 1947, is amended to read as follows:

"23-3405. Organization of committee -- meeting -- county convention to elect delegates and alternates to state convention. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one (1) or more vice-chairmen. The chairman ~~or~~ and first vice-chairman shall be ~~a woman~~ of opposite sex. They shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct ~~committeemen~~ committeepersons.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise any and all powers conferred upon the county, city, state, and congressional central committees by this act.

(3) The chairman of the county central committee shall call the central committee meeting and not less than four (4) days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct

~~committeeman~~ committeeperson. If party rules permit the use of a proxy, no proxy shall be recognized unless held by an elector of the precinct of the ~~committeeman~~ committeeperson executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed ~~committeeman~~ committeeperson or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a ~~committeeman~~ committeeperson is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates."

Section 14. Section 23-4727, R.C.M. 1947, is amended to read as follows:

"23-4727. Expenditure by or for candidate for office. No sums of money shall be paid, and no expenses authorized or incurred, by or on behalf of any candidate to be paid by ~~him~~ such candidate, except such as ~~he may pay~~ may be paid to the state for printing, as herein provided, in ~~his~~ a

campaign for nomination to any public office or position in this state, in excess of fifteen per cent of one year's compensation or salary of the office for which ~~he~~ the person is a candidate; provided, that no candidate shall be restricted to less than one hundred dollars in ~~his~~ a campaign for such nomination. No sums of money shall be paid, and no expenses authorized or incurred, contrary to the provisions of this act, for or on behalf of any candidate for nomination. For the purposes of this law, the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, ~~wife~~ spouse, partner, employer, employee, or fellow official or fellow employee of a corporation shall be deemed to be that of the candidate ~~himself~~."

Section 15. Section 23-4728, R.C.M. 1947, is amended to read as follows:

"23-4728. Limitation of expenditures by candidate -- by party organizations -- by relatives. No sums of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate who has received the nomination to any public office or position in this state, except such as ~~he~~ the candidate may contribute towards payment for ~~his~~ the political party's or independent statement in the pamphlet herein provided for, to be paid by ~~him~~ such candidate in his campaign for election, in excess of ten per

cent of one year's salary or compensation of the office for which ~~he~~ the candidate is nominated; provided, that no candidate shall be restricted to less than one hundred dollars. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any political party or organization to promote the success of the principles or candidates of such party or organization, contrary to the provisions of this act. For the purposes of this act, the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, ~~wife~~ spouse, partner, employer, employee, or fellow official or fellow employee of a corporation, shall be deemed to be that of the candidate ~~himself~~."

Section 16. Section 35-409, R.C.M. 1947, is amended to read as follows:

"35-409. Definitions. The following terms, whenever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Local agency" means any county, city, town, school district, or housing authority of the state.

(2) "Housing" means any temporary war or veterans' housing acquired from the United States of America under the terms and provisions of the Housing Act of 1950, being Title II, Chapter 94, Public Law 475, of the laws of the

Eighty-first Congress, Second Session, for the purpose of providing temporary housing for veterans and for families of servicemen, located within the boundaries of any local agency.

(3) "Veterans" includes, in so far as permitted by federal law, any person who has served in the military or naval forces of the United States and has been discharged or released therefrom under conditions other than dishonorable.

(4) "Families of servicemen" includes, in so far as permitted by federal law, the families of any person who is serving in the military or naval forces of the United States, and the unmarried ~~widow~~ surviving spouse of a deceased veteran.

(5) "Families" is limited to the spouse and legal dependents who are members of the household."

Section 17. Section 39-108, R.C.M. 1947, is amended to read as follows:

"39-108. Acknowledgment by married ~~women.~~ persons. The acknowledgment of a married ~~woman~~ person to an instrument purporting to be executed by ~~her~~ such person must be taken the same as that of any other person."

Section 18. Section 39-109, R.C.M. 1947, is amended to read as follows:

"39-109. Conveyance by married ~~woman~~ person -- acknowledgment. A conveyance by a married ~~woman~~ person has

the same effect as if ~~she~~ such person were unmarried, and may be acknowledged in the same manner."

Section 19. Section 39-113, R.C.M. 1947, is amended to read as follows:

"39-113. Form of certificate of acknowledgment by married ~~woman.~~ person. The certificate of acknowledgment by a married ~~woman~~ person must be substantially in the form prescribed in section 39-111."

Section 20. Section 40-3312, R.C.M. 1947, is amended to read as follows:

"40-3312. Application for license. (1) Application for an agent or solicitor license shall be made to the commissioner by the applicant, and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The commissioner shall designate and prepare forms for application for license which shall require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, purpose for which the license is to be used and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application shall

state the kinds of insurance proposed to be transacted, and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application shall be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers and directors, and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to section 40-3311, the application shall show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application shall also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended or revoked; whether any insurer, general

agent or agent (in the case of a solicitor application) claims applicant to be indebted to it, and if so the details thereof and the defenses, if any, of the applicant thereto; whether applicant ever had an agency contract canceled, and the facts thereof; and if applicant is ~~a~~ married, ~~woman,~~ like information with respect to ~~her husband~~ the applicant's spouse.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented (in the case of applicants for license as agent), or of the proposed employing agent (in the case of applicants for license as solicitor) as to whether the applicant is known to ~~him~~ such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring ~~his~~ the applicant's own risks or interests and those of ~~his~~ the applicant's relatives or employer.

(9) All such applications shall be accompanied by the applicable license fee, appointment of agent fee where applicable, examination fee where required under section 40-3313, all in the respective amounts stated in section

40-2726 (fees and licenses)."

Section 21. Section 40-4902, R.C.M. 1947, is amended to read as follows:

"40-4902. "Benevolent association" defined. (1) Any corporation, association or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members, whereby, upon decease of a member, any money or other benefit, charity, aid or relief is to be paid, provided or rendered by such corporation, association or society to his legal representatives, or to the beneficiary designated by him, which money, benefit, charity, aid or relief is derived from voluntary donations, or from admission fees, dues or assessments, or any of them collected or to be collected from the members thereof, or members of a class therein, or interest or accretions thereon, or accumulations thereof; and wherein the money or other benefit, charity, aid or relief, so realized, is applied to or accumulated for the uses and purposes herein specified, and/or the uses of such corporation, association or society, and/or the expenses of management and prosecution of its business, shall be deemed to be a "benevolent association" for the purposes of this chapter.

(2) The definition of benevolent association in subsection (1) above is not applicable to:

(a) Burial or death benefits, annuities, endowments or any other benefit payments of any legal reserve life or disability insurer, or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions; or

(b) Any ~~ladies~~ auxiliaries to any labor union, railroad brotherhood or lodge referred to in subdivision (a) above; or

(c) The benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order."

Section 22. Section 40-5305, R.C.M. 1947, is amended to read as follows:

"40-5305. Exempted societies. (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, and the ~~ladies'-societies-or-ladies'~~ auxiliaries to such orders, societies or associations;

(c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars ($400) or disability benefits of not more than three hundred fifty dollars ($350) to any person in any one year, or both; or

(d) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars ($400) or for disability benefits of not more than three hundred fifty dollars ($350) to any one person in any one year, or both.

(2) Any such society or association described in clauses (c) or (d), above, which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in paragraph (d) which has more than one thousand (1,000) members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

(3) No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in paragraph (b), above, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

(4) Every society which provides for benefits in case

of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(5) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this chapter.

(6) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state."

Section 23. Section 41-1119, R.C.M. 1947, is amended to read as follows:

"41-1119. Seats for ~~female~~ employees. Every employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any ~~female~~ person, shall provide suitable seats for all ~~female~~ employees and shall permit them to use such seats when they are not employed in the active duties of their employment."

Section 24. Section 41-1506, R.C.M. 1947, is amended to read as follows:

"41-1506. ~~Wife~~ Spouse must join in assignment of wages -- acknowledgment. No assignments of ~~his~~ wages or salary to a wage broker by a married ~~man~~ person, who shall have a ~~wife~~ spouse residing in this state, shall be valid or enforceable without the consent of ~~his wife~~ such spouse, evidenced by ~~her~~ the spouse's signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments, and no wage broker or person connected with ~~him~~ a wage broker, directly or indirectly, shall be authorized to take any such acknowledgments."

Section 25. Section 45-511, R.C.M. 1947, is amended to read as follows:

"45-511. Who deemed owners. Every person, including guardians of minors, married ~~women~~ persons, and any company, association, or corporation not tenants or lessees, for whose use, benefit, or enjoyment any property, building, structure, or improvement mentioned in this chapter is constructed, repaired, or altered, is deemed the owner thereof for the purposes of this chapter."

Section 26. Section 45-603, R.C.M. 1947, is amended to read as follows:

"45-603. Priority of wages in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, ~~salesman~~ salesperson, clerk, servant,

and laborer for services rendered within four (4) months next preceding the death of the employer, in the amount actually owed, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the ~~widow~~ surviving spouse and infant children, and must be paid before other claims against the estate of the deceased person."

Section 27. Section 45-808, R.C.M. 1947, is amended to read as follows:

"45-808. Owner defined. Every person, including guardians or minors, married ~~women~~ persons, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are threshed, or the services rendered or labor performed, is deemed the owner thereof for the purposes herein mentioned."

Section 28. Section 59-519, R.C.M. 1947, is amended to read as follows:

"59-519. Appointment of relative to office of trust or emolument unlawful. It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person ~~or persons~~ related ~~to him or them~~ or connected ~~with him or them~~ by consanguinity within the

fourth degree, or by affinity within the second degree; except that the provisions of this section shall not apply to sheriffs in the appointment of ~~females~~ persons as cooks and/or ~~matrons~~ attendants. It shall further be unlawful for any person or any member of any board, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree."

Section 29. Section 63-107, R.C.M. 1947, is amended to read as follows:

"63-107. Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 63-208 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership,

whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima-facie evidence that ~~he~~ such person is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

(b) As wages of an employee or rent to a landlord,

(c) As an annuity to a ~~widow~~ surviving spouse or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of a good will of a business or other property by installments or otherwise."

Section 30. Section 63-402, R.C.M. 1947, is amended to read as follows:

"63-402. Nature of a partner's right in specific partnership property. (1) A partner is co-owner with ~~his~~ the other partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with ~~his~~ the other partners to possess specific partnership property for partnership purposes~~;~~, but ~~he~~ has no right to possess such property for any other purpose without the consent of ~~his~~ the other partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner, ~~his~~ that partner's right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, ~~when--his~~ in which case such deceased partner's right in such property vests in ~~his~~ the deceased's legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to ~~dower, courtesy,~~ the surviving spouse's elective share or allowances to ~~widows~~ surviving spouses, heirs, or next of kin."

Section 31. Section 64-209, R.C.M. 1947, is amended to read as follows:

"64-209. Protection of personal relations. The rights of personal relations forbid:

1. The abduction ~~of a husband from his wife, or~~ of a parent from ~~his~~ a child;

2. The abduction or enticement of a wife from her husband or a husband from his wife, of a child from a parent or from a guardian entitled to its custody, or of a servant from ~~his~~ a master;

3. The seduction of a ~~wife~~ spouse, ~~daughter~~ child, orphan, ~~sister,~~ or servant;

4. Any injury to a servant which affects ~~his~~ the servant's ability to serve ~~his~~ the master."

Section 32. Section 67-903, R.C.M. 1947, is amended to read as follows:

"67-903. Married ~~women,~~ persons. A married ~~woman~~ person may execute a power during ~~her~~ marriage, without the concurrence of ~~her--husband~~ the spouse, unless otherwise prescribed by the terms of the power."

Section 33. Section 67-904, R.C.M. 1947, is amended to

read as follows:

"67-904. Married ~~women.~~ persons. No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority.

Section 34. Section 67-1603, R.C.M. 1947, is amended to read as follows:

"67-1603. Grant by married ~~woman~~ person -- how acknowledged. No estate in the real property of a married ~~woman~~ person passes by any grant purporting to be executed or acknowledged by ~~her~~ such person, unless the grant or instrument is acknowledged by ~~her~~ the grantor in the manner prescribed by sections 39-108 and 39-113."

Section 35. Section 71-120, R.C.M. 1947, is amended to read as follows:

"71-120. Burial of deceased military service men and women. (1) It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged service man or woman, whose duty it shall be to cause to be decently interred the body of any honorably discharged service man or woman, who shall have served in any branch of the armed services of the United States and who may hereafter die or any service man or woman who died while in

service during any declared or undeclared war, or ~~female~~ resident of the Montana veterans' home, who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead.

(2) The expense of burial shall be two hundred fifty dollars ($250), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death.

(3) The benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits.

(4) That the expense of each burial of a ~~female~~ resident of the Montana veterans' home, shall not exceed the sum of two hundred fifty dollars ($250), to be paid by the county commissioners of the county in which the deceased person resided prior to ~~her~~ admittance to the Montana veterans' home.

(5) In the event any such honorably discharged person, male or female, who shall have served in the armed services of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of ~~his~~ residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as

above provided.

(6) Whenever any such honorably discharged person, male or female hereinbefore described shall die at any public institution of the state of Montana, other than the state veterans' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment."

Section 36. Section 72-617, R.C.M. 1947, is amended to read as follows:

"72-617. Persons to whom free transportation may be issued. The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following, to wit: (a) The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers; (b) to the families of the persons included in subdivision "a" hereof; (c) the general officers of any such common carriers; (d)

employees of sleeping car and express car companies, and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys <u>and newsgirls</u> on trains, baggage agents; (e) persons injured in wrecks, and physicians and nurses attending such persons; (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation; (g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations; (h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes; (j) superannuated and pensioned employees, and members of their families and ~~widows~~ <u>surviving spouse</u> of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (l) policemen and firemen of any city, wearing the insignia of their office within the limits of such city; (m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations

and Young Women's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; (n) indigent, destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents, employees in such transportation; (o) school children to and from public or parochial schools; (p) the railroad commission of Montana; (q) the state fire marshal; (r) the state scale expert, and their necessary employees, while traveling on official duty.

The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city, where a condition of a franchise grant requires the furnishing of transportation to policemen, firemen, and officers while in the performance of official duties. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that this act shall not be construed to modify or repeal the provisions of section 72-618."

Section 37. Section 72-618, R.C.M. 1947, is amended to read as follows:

"72-618. Additional free transportation authorized. That common carriers of passengers in this state authorized by section 72-617, to issue free transportation to certain classes of persons may also issue free transportation to their furloughed employees and members of their families, to persons who have become disabled or infirm in the service of a common carrier, to members of families of persons who have become disabled or infirm in the service of any such common carrier, to families of persons killed, and ~~widows--during widowhood~~ surviving spouses who have not remarried and minor children during minority, of persons who died while in the service of any such common carrier, to witnesses attending any legal investigation in which such carrier is interested, for the remains of persons who died while in the employment of a common carrier, and to ex-employees traveling for the purpose of entering the service of any such common carrier; provided that the provisions hereof shall not be construed to prohibit or make unlawful the interchange of passes for the persons to whom free transportation may be furnished under this section."

Section 38. Section 75-8701, R.C.M. 1947, is amended to read as follows:

"75-8701. Qualification of students. The university system is open to all people subject to such uniform regulations as the regents deem proper. All able-bodied

~~male~~ students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state."

Section 39. Section 77-501, R.C.M. 1947, is amended to read as follows:

"77-501. Purpose of act -- definitions -- preference. The purpose of this act is to provide for preference of veterans, their unremarried ~~widows~~ surviving spouses, and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

(1) Definitions.

(a) The term "veterans" as herein used, means men and women who served in the armed forces of the United States, and who have been separated from such service upon conditions other than dishonorable, in time of war or declared national emergency as follows: the Civil War; the Spanish American War; the Philippine Insurrection; World War I, between April 6, 1917, and November 11, 1918, both dates inclusive; World War II, which term means such service between September 16, 1940, and December 31, 1946, both dates inclusive; the Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and those honorably discharged

veterans who have served on active military duty for more than one hundred eighty (180) days after January 31, 1955, or who were discharged or released because of a service-connected disability, including, but not limited to, those veterans serving because of the Vietnam Conflict.

(b) The term "~~widows~~-surviving spouse" as herein used means unremarried ~~widows~~ surviving spouses of veterans.

(c) The word "per centum" means per centum of the total aggregate points of the examination hereinafter referred to.

(2) Preference to appointment and employment.

In every public department and upon all public works of the state of Montana and of any county or city thereof, the following shall be preferred for appointment and employment: veterans, their ~~wives--and--widows~~ spouses and surviving spouses, and the other dependents of disabled veterans; disabled civilians recommended by the state rehabilitation bureau;

Provided that age, loss of limb, or other physical impairment which does not in fact incapacitate, shall not be deemed to disqualify any disabled veteran or any such disabled civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved;

Provided further that those of the above described

veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of said wars or military expeditions or police action, where such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans.

(3) Credit for examinations.

When written or oral examinations are required for employment as above described, disabled veterans and their ~~wives~~ spouses, their unremarried ~~widows~~ surviving spouses, and other dependents of disabled veterans, shall have added to their examination ratings a credit of ten points, and all other veterans, their ~~wives~~ spouses, unremarried ~~widows~~ surviving spouses, and dependents shall have added to their examination ratings a credit of five points; provided that the fact that an applicant has claimed a veterans' credit shall not be made known to the examiners until ratings of all applicants have been recorded; after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit; provided further that the benefits of this subsection are in addition to and not in derogation of the preference in appointment and/or employment given by subsection (2) hereof.

(4) Eligibility.

That none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached, or to take up arms in the defense of the United States; provided, however, that no person, not a citizen of the United States, shall be employed by any state, city or county officer in any capacity if competent American labor is available; and provided, further, that no person who has not been a resident of Montana for at least one (1) year immediately preceding an appointment shall be entitled to such preference; provided, further, that for city or county employment, no preference will be granted unless applicant under this act is also a resident of the city or town or county in which employment is sought.

(5) Enforcement of preference.

That any person entitled to preference in this section who has applied for any appointment or employment upon public works of the state of Montana or of any county and city thereof, or in any public department of said state and who has been denied said employment or appointment and feels that the spirit of this act has been violated and that ~~he~~ such person is in fact qualified physically, mentally and possesses business capacity, competency and education to discharge the duties of the position applied for, shall have the right to petition by verified petition the district

court of the state of Montana in the county in which the work is to be performed, setting forth the facts of ~~his~~ the application, qualifications, competency and ~~his~~ such person's honorable discharge or other qualifications warranting ~~him~~ the applicant to preference under this act, and upon filing of such petition any judge in said court shall forthwith issue an order to show cause to the appointing authority directing said appointing authority to appear in said court at a specified time and place, not less than five (5) nor more than ten (10) days after the filing of said verified petition, to show cause, if any ~~he has~~ exists, why said veteran or person entitled to preference should not be employed by ~~him~~ such appointing authority and that said district court shall have jurisdiction upon the proper showings to issue its order directing and ordering said appointing authority to comply with this law in giving the preference herein provided."

Section 40. Section 77-1002, R.C.M. 1947, is amended to read as follows:

"77-1002. Duty of commission. It shall be the duty of the commission and it shall have power to establish a state-wide service for discharged veterans and their families; to actively co-operate with state and federal agencies having to do with the affairs of veterans and their families; and to promote the general welfare of all veterans

and their families. In carrying out the purposes of this act the commission may employ a director, service officers, assistants, clerks, or other personnel, all of whom must be residents of the state of Montana, prescribe their duties and fix and pay their compensation; and establish a state headquarters and such other offices as may be necessary to carry out the purposes of this act. ~~All--male~~ Whenever possible, all employees of the commission shall have served in the military forces of the United States during World War I, World War II, the Korean War, or the Vietnam Conflict, and shall have been honorably discharged therefrom; ~~whenever possible--female--employees--shall-also-be-persons-honorably discharged-from-service-during-World-War-I,--World--War--II, the--Korean-War,-or-the-Vietnam-Conflict,~~ preference for all appointments shall be given to disabled veterans."

Section 41. Section 80-1801, R.C.M. 1947, is amended to read as follows:

"80-1801. Location and function of home -- persons admitted. The institution at Columbia Falls is the "Montana Veterans' Home" and, as its primary function, provides home and subsistence for honorably discharged veterans. The department may also admit ~~wives--or--widows~~ spouses or surviving spouses of honorably discharged veterans to the home if space allows."

Section 42. Section 80-1803, R.C.M. 1947, is amended

to read as follows:

"80-1803. Eligibility for residence in home. To be eligible for residence in the Montana veterans' home under the regulations prescribed by the state department of institutions a person shall

(1) Be an honorably discharged veteran, or the ~~wife or widow~~ spouse or surviving spouse of a veteran, who served in the armed forces of the United States.

(2) Be an invalid and have become unable to earn a livelihood as a result of the disability.

(3) Have resided in Montana for a period of two years immediately prior to making application for admittance.

(4) Not have been convicted of a felony or of a crime involving moral turpitude.

(5) Not be an alcoholic or have a record of habitual inebriation.

~~(6)--If a woman, be fifty (50) years of age or older.~~"

Section 43. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to

enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in

the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 1/4) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and

other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the ~~widow~~ surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or

merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually

occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower ~~sixty-five (65)~~ sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to ~~his~~ income, if applicable, as to ~~his~~ retirement benefits, if applicable, or, as to ~~his~~ marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form.

Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. All property not included in the eight (8) preceding classes."

Section 44. Section 84-3206, R.C.M. 1947, is amended to read as follows:

"84-3206. Laundries. Every person engaged in laundry business, other than the steam-laundry business, shall pay a license of ten dollars per quarter; provided, that this act shall not apply to ~~the--women~~ persons engaged in ~~the~~ a laundry business~~,~~ where not more than two ~~women~~ persons are engaged or employed or kept at work, and said license shall be for one place of business only."

Section 45. Section 91-1304, R.C.M. 1947, is amended to read as follows:

"91-1304. Authority of unmarried ~~women~~ person not extinguished by ~~her~~ marriage--appointment of married ~~women~~ person. When an unmarried ~~women~~ person appointed ~~executrix~~ personal representative marries, ~~her~~ such person's authority is not extinguished. When a married ~~women~~ person is named as ~~executrix~~ personal representative, ~~she~~ such person may be appointed and serve in every respect as an unmarried ~~women~~ person."

Section 46. Section 92-707, R.C.M. 1947, is amended to

read as follows:

"92-707. Compensation from what date paid. When an injured employee has no ~~wife~~ spouse, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of ~~his~~ the employee's death, no compensation shall be allowed or paid during the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues one (1) week, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of ~~his~~ the employee's death, no compensation shall be paid for the first week of any injury, but if disability continues one (1) week, compensation shall be paid from the date of injury; provided, that separate benefits of medical and hospital services shall be furnished from date of injury."

Section 47. Section 92-1303, R.C.M. 1947, is amended to read as follows:

"92-1303. Definitions. Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the Workmen's Compensation Act shall apply to terms and words herein contained.

1. "Weekly wage" means the average of the weekly

earnings of the employee in the employ of ~~his~~ an employer against whom compensation is awarded during the period of one year prior to the termination of ~~his~~ the employment with such employer, or during such lesser period in such year as ~~he~~ the employee has been in the employ of his employer. In case the employee is absent from employment during the period as a result of the occupational disease for which compensation is claimed, then the week or weeks in which the absence occurs shall not be included in the computation of the average weekly wage. If the period provided in this section for computation of the average weekly wage does not include four weeks, then the average weekly wage shall be such as, having regard to the previous wage of the employee, or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the weekly earning capacity of the disabled employee in the employment in which ~~he~~ the employee is working at the time of his disablement.

2. "Award" means the finding or decision of the board as to the amount of compensation due any disabled employee or the dependents of any deceased employee.

3. "Board" means the industrial accident board of the state of Montana.

4. "Compensation" means the payments and benefits

provided in this act.

5. "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." Provided that in the event of death or disability due to pneumoconiosis the following shall apply:

a. If a miner who is suffering or has suffered from pneumoconiosis was employed for ten (10) years or more in one (1) or more coal mines there shall be a rebuttable presumption that ~~his~~ the pneumoconiosis arose out of such employment.

b. If a deceased miner was employed for ten (10) years or more in one (1) or more coal mines and died from a respirable disease there shall be a rebuttable presumption that ~~his~~ the death was due to pneumoconiosis.

c. If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one (1) or more large opacities (greater than one centimeter in diameter) and would be

classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (3) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in the manner prescribed in clause (1) or (2) then there shall be an irrebuttable presumption that ~~he~~ such miner is totally disabled due to pneumoconiosis or that ~~his~~ death was due to pneumoconiosis, as the case may be.

6. The terms "employee," "workman," and "operative," as used herein, shall mean:

Every person in the service of the state, and of a county, city, town, municipal corporation, or school district, including the regular members of lawfully constituted police and fire departments of cities and towns.

Every person in the service of any employer subject to this act as hereinafter defined or to whom such employer is required to secure compensation under this act, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of trade, business, or occupation of the employer, and not including agricultural workers and domestic servants unless the employer shall so

elect.

7. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years, or if no surviving wife or husband then a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of disablement.

8. "Major dependent" means if there be no beneficiary as defined in a preceding section, the father or mother, or the survivor of them, if actually dependent upon the decedent at the time of ~~his~~ the decedent's disablement, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

9. "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding section the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of ~~his~~ the decedent's disablement. Minor dependents shall be

awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

10. "Invalid" means one who is physically or mentally incapacitated.

11. "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the disablement, an illegitimate child legitimized prior to the disablement.

12. "Week" means six (6) working days, but includes Sundays.

13. "Wages" means the average daily wages received by the employee at the time of the disablement for the usual hours of employment in a day, and overtime is not to be considered.

14. "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the disablement.

15. "Husband" or "widower" means only a husband or widower ~~incapable of supporting himself, and~~ living with, or legally entitled to be supported by the deceased at the time of her disablement.

16. "Commissioner" means one (1) of the members of the industrial accident board.

17. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

18. "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

19. "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve (12) times the average monthly payroll for the current year; provided, that an estimate may be made by the board for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

20. "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth (30th) day of the succeeding June.

21. "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

22. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation

of the employer.

23. The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice ~~his~~ that profession in this state.

24. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

25. Wherever the masculine gender is used, the feminine and neuter shall be included.

26. For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic X-ray pattern, and by variable clinical manifestations.

a. For the purpose of this act "pneumoconiosis" is defined as a chronic dust disease of the lung arising out of employment in coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

27. "Workshift" means the work for which an employee is paid a day's wages.

28. "Workmen's Compensation Act" means the Workmen's Compensation Act of the state of Montana."

Section 48. Section 92-1321, R.C.M. 1947, is amended

to read as follows:

"92-1321. Compensation benefits payable under this act. The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease, or ~~his~~ the beneficiaries and dependents of the employee in the case of death caused by an occupational disease, shall be entitled to under this act shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time, as is provided in cases of temporary total disability, permanent total disability and in cases of injuries causing death under the Workmen's Compensation Act of the state of Montana. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this act, be made as follows:

a. In the case of total disability of a miner due to pneumoconiosis the disabled miner shall be paid benefits during the disability at the rate of one hundred fifty-five dollars ($155) per month.

b. In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to ~~his--widow~~ the miner's surviving spouse (if any) at the rate the deceased miner would receive such benefits if ~~he were~~ totally disabled.

c. In the case of an individual entitled to benefit

payments under clause a. or b. who has one or more dependents, the benefit payments shall be increased at the rate of fifty per centum (50%) of such benefit payments, if such individual has one (1) dependent, seventy-five per centum (75%) if such individual has two (2) dependents, and one hundred per centum (100%) if such individual has three (3) or more dependents."

Section 49. Section 93-2803, R.C.M. 1947, is amended to read as follows:

"93-2803. When a married ~~woman~~ person is a party -- actions by and against. A married ~~woman~~ person may sue and be sued in the same manner as if ~~she~~ such person were sole."

Section 50. Section 93-2804, R.C.M. 1947, is amended to read as follows:

"93-2804. ~~Wife~~-Spouse may defend, when. If a husband and wife be sued together, ~~the wife~~ each spouse may defend for his or her own right, and if the ~~husband~~ other spouse neglect to defend, ~~she~~ the spouse who does choose to defend may defend for ~~his--right--also~~ the other spouse's right also."

Section 51. Section 93-2807, R.C.M. 1947, is amended to read as follows:

"93-2807. Unmarried ~~female~~ person may sue for ~~her own~~ seduction. An unmarried ~~female~~ person may prosecute, as plaintiff, an action for his or her own seduction, and may

recover therein such damages, pecuniary or exemplary, as are assessed in ~~her~~ such person's favor."

Section 52. Section 93-2808, R.C.M. 1947, is amended to read as follows:

"93-2808. Parent or guardian may sue for seduction of ~~daughter~~ child or ward. ~~A-father,-or-in-case-of-his-death-or desertion-of-his--family,--the--mother,~~ Either parent may prosecute as plaintiff for the seduction of the ~~daughter~~ child, and the guardian for the seduction of the ward, though the ~~daughter~~ child or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service."

Section 53. Section 93-2809, R.C.M. 1947, is amended to read as follows:

"93-2809. Parent or guardian may sue for injury or death of child or ward. ~~A-father,-or-in-case-of-his-death-or desertion-of-his--family,--the--mother,~~ Either parent may maintain an action for the injury or death of a minor child, and a guardian for injury or death of ~~his~~ a ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person."

Section 54. Section 93-4207, R.C.M. 1947, is amended

to read as follows:

"93-4207. Security upon injunction. On granting an injunction or restraining order, the court or judge may require, except when the state, a county, or any subdivision thereof, or municipal corporation, or a ~~married--woman~~ married person in a suit for divorce against ~~her-husband~~ his or her spouse, is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If ~~he~~ the plaintiff fails to do so, ~~he~~ such plaintiff is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."

Section 55. Section 93-4707, R.C.M. 1947, is amended to read as follows:

"93-4707. Judgment for or against married ~~woman~~ person. Judgment for or against a married ~~woman~~ person may be rendered and enforced as if ~~she~~ such person were single."

Section 56. Section 93-5834, R.C.M. 1947, is amended to read as follows:

"93-5834. Real property sold -- how redeemed -- who are redemptioners. Property sold subject to redemption, as provided by the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, ~~his wife~~ the judgment debtor's spouse, or his successor in interest, in the whole or any part of the property, and if the judgment debtor or successor be a corporation, then by a stockholder thereof;

2. A creditor having a lien by judgment, mortgage, or attachment on the property sold, or on some share or part thereof, subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem. The persons mentioned in the second division of this section are, in this chapter, termed "redemptioners.""

Section 57. Section 93-5836, R.C.M. 1947, is amended to read as follows:

"93-5836. Redemptioners' rights -- manner of redeeming -- when purchaser entitled to deed -- certificate of

redemption -- redemption by stockholders -- redeeming from ~~wife~~ spouse. (1) If property be so redeemed by a redemptioner, another redemptioner may, within sixty (60) days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption, with interest thereon at the rate of one-half of one per cent (1/2%) per month in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and, in addition, the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with interest thereon at the rate of one-half of one per cent (1/2%) per month, and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if

any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk; and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien. If no redemption be made within one year after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor or ~~his wife~~ the judgment debtor's spouse redeem, ~~he~~ the judgment debtor or ~~she~~ the spouse must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and ~~he~~ the debtor is restored to his own estate. If the ~~wife~~ spouse redeem, ~~she~~ such spouse shall become the owner of ~~her husband's~~ the debtor spouse's interest, subject to any liens thereon at the time of the execution sale. Upon a redemption by a debtor, or ~~his wife~~ the debtor's spouse, the person to whom the payment was made must execute and deliver

to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

(3) If a stockholder of a corporation redeems, the corporation, within one (1) year after the date of sale, may redeem by paying to the redemptioner, or the sheriff for his benefit, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent (1/2%) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon. When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption, and within sixty (60) days after the expiration of one (1) year from the date of sale, contribute to the redemption by paying to the redeeming stockholder, or depositing with the sheriff for his benefit, a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the

date of redemption until the date of contribution at the rate of one-half of one per cent (1/2%) per month, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon, and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed, and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit, setting forth the number of shares of stock owned by him, and to the best of his knowledge, the number of shares of stock of the corporation outstanding.

(4) If the ~~wife~~ spouse of a judgment debtor redeem, the ~~husband~~ judgment debtor, within one year after the date of sale, may redeem by paying the ~~wife~~ spouse or ~~her~~ the spouse's successors in interest or the sheriff for ~~her or their~~ the benefit of the spouse or the successors in interest of the spouse, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent (1/2%) per month from the date of redemption until the date of such payment, together with any taxes or

assessments that may have been paid by the ~~wife~~ spouse or ~~her~~ the successors in interest of the spouse, with like interest thereon."

Section 58. Section 93-6711, R.C.M. 1947, is amended to read as follows:

"93-6711. Service of summons. The summons may be served by a sheriff or constable of any of the counties of this state; provided, that when a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons; or the summons may be served by any ~~male~~ person resident in the state, ~~over the age of~~ eighteen (18) years of age or older, not a party to the suit, and must be served and returned as provided in Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (6), and (9); or it may be served by publication, provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts; the word "justice" being substituted for the word "clerk" whenever the latter word occurs."

Section 59. Section 93-3706, R.C.M. 1947, is amended to read as follows:

"93-9706. Parties defendant. No person other than the tenant of the premises, and subtenant if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, is guilty of the offense charged, judgment must be rendered against ~~him~~ such party. In case a defendant has become a subtenant of the premises in controversy, after the service of the notice provided for by part 2 of section 93-9703, upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action. ~~In case a married woman be a tenant, or a subtenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she has separate property, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action, or against her separate property.~~ In case a married person is a tenant or subtenant, failure to join such person's spouse shall constitute no defense; but in case the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant can only be enforced against property on

the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by his spouse. All persons who enter the premises under the tenant, after the commencement of the action, shall be bound by the judgment, the same as if he or they had been made party to the action."

Section 60. Section 93-100-2, R.C.M. 1947, is amended to read as follows:

"93-100-2. Application for change of name -- now made. All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under eighteen (18) years of age, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if ~~the father~~ neither parent of such person be ~~not~~ living, name as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition,

apply to the district court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be made as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association."

Section 61. Section 95-609, R.C.M. 1947, is amended to read as follows:

"95-609. Assisting a peace officer. (a) A peace officer making a lawful arrest may command the aid of ~~male~~ persons ~~over the age of~~ eighteen (18) years of age or older.

(b) A person commanded to aid a peace officer shall have the same authority to arrest as that officer.

(c) A person commanded to aid a peace officer in making an arrest shall not be civilly liable for any reasonable conduct in aid of the officer."

Section 62. There is a new R.C.M. section numbered 12-216 that reads as follows:

LC 0006

12-216. "Man" and "men" to include women. Wherever the word man or men or a word which includes the syllable "man" or "men" in combination with other syllables, such as "workman" appears in this code, such word or syllable shall be deemed to include "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to the male sex only.

-End-

APPENDIX I-2

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL SECTIONS
5 10-301 THROUGH 10-310, R.C.M. 1947, PERTAINING TO
6 APPRENTICING OF MINORS."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9 Section 1. Sections 10-301 through 10-310, R.C.M.
10 1947, pertaining to apprenticing of minors are repealed.

-End-

APPENDIX I-3

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE LAWS
5 RELATING TO RESIDENCE AND DOMICILE IN ORDER TO REMOVE SEXUAL
6 DISCRIMINATION; AMENDING SECTIONS 23-3022, 75-8703, 75-8704
7 AND 83-303, R.C.M. 1947; AND REPEALING SECTION 36-102,
8 R.C.M. 1947."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 23-3022, R.C.M. 1947, is amended to
12 read as follows:
13 "23-3022. Residence, rules for determining. For
14 registration or voting, the residence of any person shall be
15 determined by the following rules as far as they are
16 applicable.
17 (1) The residence of a person is where his habitation
18 is fixed, and to which, whenever he is absent, he has the
19 intention of returning.
20 (2) A person may not gain or lose a residence while a
21 student at any institution of learning, while kept
22 involuntarily at any public institution not necessarily at
23 public expense, while confined in any public prison, or
24 while residing on a military reservation.
25 (3) A person in the armed forces of the United States

may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a ~~man's~~ person's family resides is presumed ~~his~~ that person's place of residence. However, a ~~man~~ person who takes up or continues ~~his~~ a residence at a place other than where his family ~~resided~~ resides with the intention of remaining is a resident of the place where he

resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election."

Section 2. Section 75-8703, R.C.M. 1947, is amended to read as follows:

"75-8703. Presumptions as to domicile. Unless the contrary appears to the unit registering authority, it is presumed that:

(1) The domicile of a minor is that:

(a) ~~of--his--father;--or~~ of the parents, or, if one of them is deceased or they do not share the same domicile, of the parent with whom the minor customarily resides; or

~~(b)--of-his-mother-if-there-is-no-father;-or~~

~~(c)~~-(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state; or

~~(d)~~ (c) of the parent who has custody of the minor.

(2) ~~The-domicile-of-a-married-woman--is--that--of--her husband;--except-that-a~~ A resident ~~woman~~ student who marries a nonresident does not by that fact alone lose ~~her~~ resident status for tuition and fee purposes for a period of four (4)

1 years after her marriage.

2 (3) Except as provided in the next subsection,
3 residence is not gained or lost because of relocation as a
4 member of the armed forces of the United States.

5 (4) Residence may be gained by a member of the armed
6 forces of the United States, his spouse, or his children by
7 living in Montana for one (1) year, and complying with the
8 provisions of this section.

9 (5) A new domicile is established by a qualified
10 person if he is physically present in Montana with no
11 intention to acquire a domicile outside of Montana.

12 (6) Domicile is not lost by absence from Montana with
13 no intention to establish a new domicile.

14 (7) Montana high school graduates are resident
15 students of the system for four (4) consecutive years of
16 attendance if:

17 (a) they apply for admittance to the system within one
18 (1) year after graduation; or

19 (b) their parents <u>or the parent with whom they</u>
20 <u>customarily reside</u> have resided in Montana in one (1) of the
21 two (2) years immediately preceding the graduation.

22 (8) Upon moving to Montana, an adult employed on a
23 full-time basis within the state of Montana may apply for
24 in-state tuition classification for his spouse or any
25 dependent minor child or both. If such person meets the

1 requirement of full-time employment within the state of
2 Montana and he files for the payment of Montana state income
3 taxes, or files estimates of such taxes, or is subject to
4 withholding of said taxes, and renounces his residency in
5 any other state, and is not himself in the state primarily
6 as a student, his spouse or any dependent minor child, or
7 both, may at the next registration after qualifying be
8 classified at the in-state rate, so long as he continues his
9 Montana domicile. In the administration of this paragraph,
10 neither the full-time employee or spouse shall be eligible
11 for in-state tuition classification if the primary purpose
12 for coming to Montana was the education of the employee or
13 spouse."
14 Section 3. Section 75-8704, R.C.M. 1947, is amended to
15 read as follows:
16 "75-8704. Evidence as to domiciliary intent--changes
17 in status. (1) To determine the domicile of a person, the
18 units of the system shall apply the following rules:
19 (a) Nonpayment of Montana income tax by a person whose
20 income is sufficient to be taxed is highly persuasive
21 evidence of nonMontana domicile.
22 (b) A person must intend to establish a domicile in
23 Montana.
24 (2) After registration, a student's classification for
25 tuition and fee purposes remains unchanged in the absence of

1 evidence to the contrary:

2 (a) A written statement of the evidence shall be filed
3 with the registering authority of the unit.

4 (b) Changes in classification shall be in writing
5 signed by the registering authority, and shall take effect
6 at the student's next registration.

7 (3) A minor shall qualify for a change in status only
8 if his parents <u>or the parent with whom he customarily</u>
9 <u>resides</u> or legal guardian or person having legal custody
10 completes the requirements for establishing domicile
11 heretofore set forth.

12 (4) It is presumed a minor or adult registered as a
13 full-time student at any unit is not qualified for a change
14 in his or his dependents classification for tuition and fee
15 purposes unless he completes twelve (12) continuous months
16 of residence while not attending a unit of the system or
17 other institution of higher learning or while serving in the
18 armed forces.

19 (5) Any student whose request for classification as a
20 resident student is denied has the right of appeal to the
21 executive secretary of the Montana university system:

22 (a) Immediately upon rejection and at the request of
23 the student, the registering authority shall forward a copy
24 of his decision and a complete file on the student to the
25 executive secretary.

(i) The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons.

(b) Within thirty (30) days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision.

(c) The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal."

Section 4. Section 83-303, R.C.M. 1947, is amended to read as follows:

"83-303. Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained.

4. ~~The--residence--of--the-father-during-his-life,-and after-his-death-the--residence--of--the--mother,--while--she remains--unmarried,--is-the-residence-of-the-unmarried-minor children.~~ The residence of his parents, or if one of them

is deceased or they do not share the same residence, the residence of the parent with whom he customarily resides, is the residence of the unmarried minor child. In case of a controversy the district court may declare which parental residence is the residence of an unmarried minor child.

~~5.--The--residence--of-the-husband-is-presumptively-the residence-of-the-wife.~~

~~6.~~-5. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

~~7.~~-6. The residence can be changed only by the union of act and intent."

Section 5. Section 36-102, R.C.M. 1947, is repealed.

-End-

APPENDIX I-4

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE LAWS RELATING TO HUSBANDS AND WIVES IN REGARD TO THEIR MUTUAL OBLIGATIONS OF SUPPORT, CONTROL OF THEIR INDIVIDUAL PROPERTY AND THEIR ABILITY TO ACT AS INDIVIDUALS, IN ORDER TO ELIMINATE SEXUAL DISCRIMINATION IN SUCH LAWS; AMENDING SECTIONS 5-106, 16-2902, 16-2905, 36-103, 36-110 THROUGH 36-120, 36-127 THROUGH 36-130, 61-104, AND 61-117, R.C.M. 1947; CREATING A NEW SECTION 36-118.1, R.C.M. 1947; AND REPEALING SECTIONS 36-102 AND 36-121, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 36-103, R.C.M. 1947, is amended to read as follows:

"36-103. Duties of husband to wife as to support. ~~The husband must support himself and wife out of his property or by his labor. If he is unable to do so she must assist him as far as she is able.~~ Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the non-monetary support provided by a spouse as homemaker."

Section 2. Section 36-110, R.C.M. 1947, is amended to read as follows:

"36-110. Married ~~women~~ person may prosecute actions. A married ~~woman~~ person in ~~her~~ his own name may prosecute action for injuries to ~~her~~ his reputation, person, property, and character, or for the enforcement of any legal or equitable right, and may in like manner defend any action brought against ~~herself~~ himself."

Section 3. Section 36-111, R.C.M. 1947, is amended to read as follows:

"36-111. ~~Separate~~ Individual property of ~~wife~~ married person. All the property of ~~the-wife~~ a married person owned before ~~her~~ marriage and that acquired afterwards is ~~her separate~~ his individual property. The ~~wife~~ married person may, without consent, agreement and signature of ~~her-husband~~ his spouse, convey and transfer ~~her-separate~~ his individual property, real or personal, including the fee simple title to real property or execute a power of attorney for the conveyance and transfer thereof."

Section 4. Section 36-112, R.C.M. 1947, is amended to read as follows:

"36-112. Inventory of ~~separate~~ individual personal property of ~~wife~~ married person. ~~A--full--and--complete inventory-of-the-separate-personal-property-of-the-wife--may be-made-out-and-signed-by-her,-acknowledged-or-proved-in-the same--manner-required-by-law-for-the-acknowledgment-or-proof of-a-grant-of-real--property--by--an--unmarried--woman,--and~~

~~recorded-in-the-office-of-the-county-clerk-of-the-county--in which--the--parties-reside.~~ A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property, and recorded in the office of the county clerk of the county in which the person lives."

Section 5. Section 36-113, R.C.M. 1947, is amended to read as follows:

"36-113. Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the ~~wife~~ person so filing."

Section 6. Section 36-114, R.C.M. 1947, is amended to read as follows:

"36-114. Earnings and accumulations of ~~wife~~ married person. The earnings and accumulations of ~~the-wife~~ a married person are not liable for the debts of ~~the-husband~~ that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children."

Section 7. Section 36-115, R.C.M. 1947, is amended to read as follows:

"36-115. Same, when separated. The earnings and accumulations of ~~the wife~~ a married person, and of ~~her~~ his minor children living with ~~her~~ him or in ~~her~~ his custody, while ~~she~~ he is living separate from ~~her husband~~ his spouse, are the ~~separate~~ individual property of ~~the wife~~ such person. Except that, to the extent that a mutual duty of support between the husband and wife as established by section 36-103 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse or minor children."

Section 8. Section 36-116, R.C.M. 1947, is amended to read as follows:

"36-116. Work and labor of ~~wife~~ married person. All work and labor performed by a married ~~woman~~ person for a person other than ~~her husband~~ his spouse and children shall, unless there is a written agreement on ~~her~~ his part to the contrary, be presumed to be performed on ~~her~~ his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse or minor children, as established by sections 36-114, 36-115, 36-118 and 36-118.1."

Section 9. Section 36-117, R.C.M. 1947, is amended to read as follows:

"36-117. Debts of ~~wife~~ spouse contracted before marriage. The property of ~~the husband~~ a married person is not liable for the debts of the ~~wife~~ person's spouse contracted before marriage."

Section 10. Section 36-118, R.C.M. 1947, is amended to read as follows:

"36-118. ~~Separate~~ Individual property of ~~wife~~ married person -- how far liable. ~~The separate property of the wife shall be exempt from all debts and liabilities of the husband, unless for necessary articles procured for the use and benefit of herself and her children under the age of eighteen years, but such exemption shall extend only to such property of such wife as shall be mentioned in an inventory thereof, as provided in sections 36-112 and 36-113. And in no case shall any of the separate property of the wife be liable for the debts of the husband, unless such property is in the sole and exclusive possession of the husband, and then only to such persons as deal with the husband in good faith on the credit of such property, without knowledge or notice that the property belongs to the wife. But the separate property of the wife is liable for her own debts, contracted before or after marriage.~~ Individual property of a married person listed in an inventory as provided in

1 sections 36-112 and 36-113, R.C.M. 1947, or otherwise proved
2 to be the individual property of the married person is
3 exempt from all debts and liabilities of that person's
4 spouse, except:
5 (1) when the debt or liability is for necessary
6 articles procured for the use and benefit of the married
7 person, the spouse or minor children; or
8 (2) when the property is in the sole and exclusive
9 possession of the spouse and the creditors have dealt with
10 the spouse in good faith on the credit of the individual
11 property without knowledge that the property does not belong
12 to the spouse."
13 Section 11. There is a new R.C.M. section numbered
14 36-118.1 that reads as follows:
15 36-118.1. Necessity determined by standard of living.
16 For purposes of determining whether a married person's
17 earnings or individual property are exempt from the debts
18 incurred by the person's spouse, the phrase "necessary
19 articles" includes all such goods and services as are
20 reasonably required to provide for the health, welfare,
21 comfort and education of the married person, his spouse and
22 minor children taking into consideration the earnings,
23 resources and general standard of living of such persons.
24 Section 12. Section 36-119, R.C.M. 1947, is amended to
25 read as follows:

"36-119. Support of ~~wife~~ spouse. If ~~the husband~~ a married person who is financially able ~~neglect~~ neglects to make adequate provision for the financial support of his ~~wife~~ spouse, except in the cases mentioned in the next section, any other person may in good faith supply ~~her~~ the spouse with articles necessary for ~~her~~ support and recover the reasonable value thereof from ~~her husband~~ the married person who has failed to provide such support."

Section 13. Section 36-120, R.C.M. 1947, is amended to read as follows:

"36-120. ~~Husband~~ Married person not liable when abandoned by ~~wife~~ spouse. A ~~husband~~ married person abandoned by his ~~wife~~ spouse is not liable for ~~her~~ the spouse's support until ~~she~~ the spouse offers to return, unless ~~she~~ the spouse was justified, by ~~his~~ the person's misconduct, in abandoning him; nor is ~~he~~ a married person liable for ~~her~~ support ~~when she~~ of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement."

Section 14. Section 36-127, R.C.M. 1947, is amended to read as follows:

"36-127. Married ~~woman~~ person may act as ~~executrix~~ personal representative, guardian, conservator or trustee. A married ~~woman~~ person may be ~~an executrix, administratrix~~ a personal representative, guardian, conservator, or trustee,

and may bind ~~herself~~ himself and the estate ~~she~~ he represents without any act or assent on the part of ~~her husband~~ the person's spouse."

Section 15. Section 36-128, R.C.M. 1947, is amended to read as follows:

"36-128. May sue and be sued. A married ~~woman~~ person may sue and be sued in the same manner as if ~~she~~ he were sole."

Section 16. Section 36-129, R.C.M. 1947, is amended to read as follows:

"36-129. Liable for ~~her~~ own contracts. The contracts made by a married ~~woman~~ person, in respect to ~~her separate~~ his individual property, labor, or services, shall not be binding upon ~~her husband~~ the person's spouse, nor render him nor his property liable therefor; but ~~she~~ the contracting person and ~~her separate~~ that person's individual property shall be liable on such contracts in the same manner as if ~~she~~ such person were sole."

Section 17. Section 36-130, R.C.M. 1947, is amended to read as follows:

"36-130. May make contracts. A married ~~woman~~ person may make contracts, oral or written, sealed or unsealed, and may waive or relinquish any right or interest in any real estate, either in person or by attorney, in the same manner, to the same extent, and with the like effect as if ~~she~~ such

1 person were ~~a single woman~~ sole."

2 Section 18. Section 5-106, R.C.M. 1947, is amended to
3 read as follows:

4 "5-106. Trust company defined--purposes for which may
5 be formed. The term "Trust Company," when used in this act,
6 means any corporation which is incorporated under the laws
7 of this state for any one or more of the following purposes:

8 1. To receive moneys in trust, and to accumulate the
9 same at such rates of interest as may be obtained or agreed
10 upon, or to allow such interest thereon as may be agreed
11 upon.

12 2. To accept and execute all such trusts and perform
13 such duties of every description as may be committed to them
14 by any person or persons whatsoever, or by any corporations,
15 or may be committed or transferred to them by order of any
16 of the courts of record of this state, or any other state,
17 or of the United States.

18 3. To take and accept by grant, assignment, transfer,
19 devise, or bequest, and hold any real or personal estate or
20 trust created in accordance with the laws of this state, or
21 any other state, or of the United States, and execute such
22 legal trusts in regard to the same on such terms as may be
23 declared, established, or agreed upon in regard thereto.

24 4. To act as agent for the investment of money for
25 other persons or corporations, and as agents for persons and

1 corporations for the purpose of issuing, registering,
2 transferring, or countersigning the certificates of stock,
3 bonds, or other evidence of debt of any corporation,
4 association, municipality, state, or public authority as may
5 be agreed upon.

6 5. To accept from and execute trusts for married ~~women~~
7 persons in respect to their ~~separate~~ individual property,
8 whether real or personal, and act as agents for them in the
9 management of such property, and generally to have and
10 exercise such powers as are usually had and exercised by
11 trust companies.

12 6. To act as trustee, assignee, or receiver in all
13 cases where it shall be lawful for any court of record,
14 officer, corporation, or person to appoint a trustee,
15 assignee, or receiver, and to be appointed a trustee,
16 assignee, or receiver, and to be appointed, commissioned,
17 and act as administrator of any estate, executor of any last
18 will and testament of any deceased person, and as guardian
19 of the person and estate of any minor or minors, or of the
20 estate of any lunatic, imbecile, spendthrift, habitual
21 drunkard, or other persons disqualified or unable to manage
22 their estates.

23 7. To loan money upon unencumbered real estate,
24 collateral, or personal security, and execute and issue its
25 notes, debentures, payable at a future date, and to pledge

1 its mortgages upon real estate and other securities as
2 security therefor.
3 8. To buy and sell government, state, county,
4 municipal, and other bonds, and all kinds of negotiable,
5 nonnegotiable, and commercial paper, stocks, and other
6 investment securities, buy and sell gold and silver bullion,
7 foreign coins, bills of exchange, and foreign and domestic
8 exchange.
9 9. To accept, receive, and hold money on deposit,
10 payable either on time or on demand, with or without
11 interest, as may be agreed upon with the depositors, and to
12 take and receive from any individual or corporation on
13 deposit for safekeeping and storage, gold and silver plate,
14 jewelry, stocks, and securities, and other valuable and
15 personal property, and to collect coupons, interest, and
16 dividends on said above described securities, and to rent
17 out the use of safes and other receptacles on their premises
18 upon such terms and for such compensation as may be agreed
19 upon."
20 Section 19. Section 16-2902, R.C.M. 1947, is amended
21 to read as follows:
22 "16-2902. What to be recorded. He must, upon payment
23 of his fees for the same, record, or photograph, or
24 correctly copy, separately, in large and well-bound, or to
25 be bound, separate books, either in a fair hand or by

1 printing or by typewriting, or by photographic process, or
2 by the use of prepared blank forms:
3 1. Deeds, grants, transfers, contracts to sell or
4 convey real estate and mortgages of real estate, releases of
5 mortgages, powers of attorney to convey real estate, and
6 leases which have been acknowledged or proved, and abstracts
7 of such instruments which have been acknowledged or proved;
8 2. Certificates of births and deaths;
9 3. Wills devising real estate admitted to probate;
10 4. Official bonds;
11 5. Transcripts of judgments which by law are made
12 liens upon real estate;
13 6. Instruments describing or relating to the ~~separate~~
14 individual property of married ~~women~~ persons, and sole
15 trader judgments;
16 7. All orders and decrees made by the district court
17 in probate matters affecting real estate which are required
18 to be recorded;
19 8. Notice of pre-emption claims;
20 9. Notice and declaration of water rights;
21 10. Assignments for the benefit of creditors;
22 11. Affidavits of annual work done on mining claims;
23 12. Notices of mining locations and declaratory
24 statement;
25 13. Estrays and lost property;

1 14. A book containing appraisement of state lands;
2 15. Such other writings as are required or permitted by
3 law to be recorded; provided, nothing herein shall be
4 construed as preventing the recording or photographing or
5 copying of such instruments, separately, upon a single or
6 loose page or pages of a book, if such page or pages shall
7 immediately become a part of such book or volume, which,
8 when completed, shall be firmly bound and the pages thereof
9 securely locked or sealed into the volume.
10 Whenever the laws of the state of Montana require or
11 permit any instrument to be recorded, such recording may be
12 made in the manner or by any of the processes hereinbefore
13 prescribed."
14 Section 20. Section 16-2905, R.C.M. 1947 is amended to
15 read as follows:
16 "16-2905. Indexes to be kept. Every county clerk, as
17 ex officio recorder, must keep:
18 1. An index of deeds, grants, and transfers, and
19 contracts to sell or convey real estate, labeled "Grantors,"
20 each page divided into four columns, headed respectively:
21 "Names of grantors," "Names of grantees," "Date of deeds,
22 grants, transfers, or contracts," and "Where recorded";
23 2. An index of deeds, labeled "Grantees," each page
24 divided into four columns, headed respectively: "Names of
25 grantees," "Names of grantors," "Date of deeds, grants,

1 transfers, or contracts," and "Where recorded";

2 3. An index of mortgages, labeled "Mortgages of real
3 property," with the pages thereof divided into six columns,
4 headed respectively: "Names of mortgagor," "Names of
5 mortgagees," "Dates of mortgages," "Where recorded," "When
6 filed," "When canceled";

7 4. An index of mortgages, labeled "Mortgages of real
8 property," with the pages thereof divided into six columns,
9 headed respectively: "Names of mortgagees," "Names of
10 mortgagors," "Date of mortgage," "Where recorded," "When
11 filed," "When canceled";

12 5. An index of mortgages, labeled "Releases of
13 mortgages of real property--Mortgagees," with the pages
14 thereof divided into six columns, headed respectively:
15 "Parties whose mortgages are released," "Parties releasing,"
16 "Date of release," "Where recorded," "Date of mortgages
17 released," "Where mortgages released are recorded."

18 6. An index of powers of attorney, labeled "Powers of
19 attorney," each page divided into five columns, headed
20 respectively: "Names of parties executing powers," "To whom
21 powers are executed," "Date of powers," "Date of recording,"
22 "To whom powers are executed";

23 7. An index of leases, labeled "Leases," each page
24 divided into four columns, headed respectively: "Names of
25 lessors," "Names of lessees," "Date of leases," "When and

where recorded";

8. An index of leases, labeled "Lessees," each page divided into four columns respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded";

9. An index of marriage certificates, labeled "Marriage certificate--Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

10. An index of marriage certificates, labeled "Marriage certificates -- Women," each page divided into six columns, headed respectively: "Women married," (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

11. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases--Assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignment," "When and where recorded";

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases--Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments," "Date of

1 assignments," "When and where recorded";

2 13. An index of wills, labeled "Wills," each page
3 divided into four columns, headed respectively: "Names of
4 testators," "Date of wills," "Date of probate," "When and
5 where recorded";

6 14. An index of official bonds, labeled "Official
7 bonds," each page divided into five columns, headed
8 respectively: "Names of officers," "Names of offices," "Date
9 of bonds," "Amount of bonds," "When and where recorded";

10 15. An index of notices of mechanics' liens, labeled
11 "Mechanics' liens," each page divided into three columns,
12 headed respectively: "Parties claiming liens," "Against whom
13 claimed," "Notices, when filed";

14 16. An index to transcripts of judgments, labeled
15 "Transcripts of judgments," each page divided into seven
16 columns, headed respectively: "Judgment debtors," "Judgment
17 creditors," "Amount of judgments," "Where recovered," "When
18 recovered," "When transcript filed," "When judgment
19 satisfied";

20 17. An index of attachments, labeled "Attachments,"
21 each page divided into six columns, headed respectively:
22 "Parties against whom attachments are issued," "Parties
23 issuing attachments," "Notices of attachments," "When
24 filed," "When attachments discharged";

25 18. An index of notices of the pendency of actions,

1 labeled "Notices of actions," each page divided into three
2 columns, headed respectively: "Parties to actions,"
3 "Notices, when recorded," "When filed";
4 19. An index of certificates of sale of real estate
5 sold under execution or under orders made in any judicial
6 proceedings, labeled "Certificates of sale," each page
7 divided into four columns, headed respectively: "Plaintiff,"
8 "Defendant," "Purchaser at sale," "Date of sale";
9 20. An index of the ~~separate~~ individual property of
10 married ~~women~~ persons and sole trader judgments labeled
11 "~~separate~~ "individual property of married ~~women~~ persons and
12 sole traders," each page divided into five columns, headed
13 respectively: "Names of married ~~women~~ persons," "Names of
14 their ~~husbands~~ spouses," "Nature of instruments recorded,"
15 "When recorded," "Where recorded";
16 21. An index to affidavits for annual work done on
17 mining claims, showing the name of the affiant, the name of
18 the claim, where situated, and the year when the work was
19 done, labeled "Annual work on mining claims";
20 22. An index of mining claims and declaratory
21 statements, labeled "Notices of location of mining claims
22 and declaratory statements," each page divided into four
23 columns, headed respectively: "Locators," "Name of claim,"
24 "Notice, when filed," "Where recorded";
25 23. An index to the register of births and deaths;

24. An index to notices and declarations of water rights;

25. An index to the "Estray and lost property book";

26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed;

27. An index to financing statements as provided in Part 4 of the Uniform Commercial Code--Secured Transactions.

28. A miscellaneous index, in which must be indexed papers not hereinbefore stated."

Section 21. Section 61-104, R.C.M. 1947, is amended to read as follows:

"61-104. Obligations of parents for the support and education of their children. The parent <u>or parents</u> entitled to the custody of a child must give him support and education suitable to his circumstances. ~~If-the-support-and education--which-the-father-of-a-legitimate-child-is-able-to give-are-inadequate,-the--mother--must--assist--him--to--the extent-of-her-ability.~~"

Section 22. Section 61-117, R.C.M. 1947 is amended to read as follows:

"61-117. ~~Husband~~ <u>Married person</u> not bound for the support of his ~~wife's~~ <u>spouse's</u> children by a former marriage. A ~~husband~~ <u>married person</u> is not bound to support his ~~wife's~~ <u>spouse's</u> children by a former ~~husband~~ <u>marriage</u>;

1 but if he receives them into his family and supports them,
2 it is presumed that he does so as a parent, and, where such
3 is the case, they are not liable to him for their support,
4 nor he to them for their services."
5 Section 23. Sections 36-102, 36-121 repealed. Sections
6 36-102 and 36-121, R.C.M. 1947, are repealed.

-End-

APPENDIX I-5

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LAWS
5 RELATING TO HOMESTEADS IN ORDER TO REMOVE SEXUAL
6 DISCRIMINATION FROM SUCH LAWS; AMENDING SECTIONS 33-102,
7 33-121, 33-125, 33-126, AND 33-127, R.C.M. 1947; AND
8 REPEALING SECTION 33-103, R.C.M. 1947."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 33-102, R.C.M. 1947, is amended to
12 read as follows:
13 "33-102. From what it may be selected. If the claimant
14 be married, the homestead may be selected from the property
15 of ~~the-husband,-or,-with-the-consent-of-the-wife,--from--her~~
16 ~~separate--property~~ <u>either spouse</u>. When the claimant is not
17 married, but is head of a family, within the meaning of
18 section 33-125, the homestead may be selected from any of
19 his or her property."
20 Section 2. Section 33-121, R.C.M. 1947, is amended to
21 read as follows:
22 "33-121. After sale, money equal to homestead
23 exemption protected. The money paid to the claimant is
24 entitled, for the period of six months thereafter, to the
25 same protection against legal process and the voluntary

disposition of ~~the--husband~~ either spouse, which the law gives to the homestead."

Section 3. Section 33-125, R.C.M. 1947, is amended to read as follows:

"33-125. "Head of family" defined. The phrase "head of a family" as used in this chapter, includes within its meaning:

1. ~~The-husband,-when-the-claimant-is-a-married-person, or-the--wife,--where--the--husband--fails--to--join--in--the declaration.~~ The husband and wife acting together or either one of them if they do not join in the particular transaction. In any given transaction which requires action by the "head of a family" the spouse who undertakes the transaction shall be deemed "head of the family" in regard to that particular transaction.

2. Every person who has attained the age of sixty years and who actually resides on the premises.

3. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either:

First. His or her minor child, or the minor child of his or her wife or husband, or former wife or husband;

Second. A minor grandchild, brother or sister, or minor child of a brother or sister;

Third. A father, mother, grandfather, or grandmother;

Fourth. The father, mother, grandfather, or grandmother, of a husband or wife; or former husband or wife;

Fifth. An unmarried sister, brother or any other of the relatives mentioned in this section, who have attained the age of majority and are unable to take care of or support themselves."

Section 4. Section 33-126, R.C.M. 1947, is amended to read as follows:

"33-126. Mode of selection. In order to select a homestead, the ~~husband-or-other~~ head of a family~~,-or-in-case the-husband-has-not-made--such--selection,--the--wife,~~ must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record."

Section 5. Section 33-127, R.C.M. 1947, is amended to read as follows:

"33-127. Declaration of homestead--must contain what. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family~~,-or,-when-the-declaration--is--made--by the--wife,--showing--that--her--husband--has--not--made-such declaration,-and-that-she-therefore--makes--the--declaration for--their--joint--benefit,~~. If both spouses join in the declaration, this fact shall be stated;

1 2. A statement that the person making it is residing
2 on the premises, and claims them as a homestead;
3 3. A description of the premises;
4 4. An estimate of their actual cash value."
5 Section 6. Section 33-103, R.C.M. 1947, is repealed.

-End-

APPENDIX I-6

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 66-402 AND 66-818, R.C.M. 1947, TO FURTHER DEFINE THE PRACTICE OF BARBERING AND COSMETOLOGY IN NON SEX-DISCRIMINATORY TERMS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 66-402, R.C.M. 1947, is amended to read as follows:

"66-402. Practice of barbering defined. Any one or any combination of the following practices, when done upon the human body for tonsorial purposes, and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

Shaving or trimming the beard.

Cutting the hair.

Giving facial or scalp massage, or treatment with oils, creams, lotions or other preparations, either by hand or mechanical appliances.

Singeing or shampooing the hair or applying hair tonic; or ~~dying~~ <u>dyeing</u> ~~the~~ hair ~~of male persons~~.

Applying cosmetic preparations, antiseptics, powders,

oils, lotions to scalp, face or neck."

Section 2. Section 66-818, R.C.M. 1947, is amended to read as follows:

"66-818. To whom provisions in this act shall not apply. Nothing in this act shall prohibit service in case of emergency or domestic administration without compensation, nor services by persons authorized under the laws of this state to practice dentistry, or to practice the healing art and licensed undertakers, nor services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation~~, or in cutting women's hair by barbers~~ on persons of either sex."

Section 3. There is a new R.C.M. section numbered 66-413 that reads as follows:

66-413. To whom provisions of this chapter shall not apply. Nothing in this chapter shall prohibit service to either sex by cosmetologists lawfully engaged in the performance of the usual and ordinary duties of their vocation.

-End-

APPENDIX I-7

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE
6 CONGRESS AND THE PRESIDENT OF THE UNITED STATES OF AMERICA
7 TO REVISE THE FEDERAL LAWS RELATING TO AID TO DEPENDENT
8 CHILDREN IN ORDER TO ELIMINATE SEXUAL DISCRIMINATION IN
9 CERTAIN PROVISIONS.

10

11 WHEREAS, the constitution of the state of Montana
12 prohibits discrimination based on sex; and
13 WHEREAS, the Montana legislature is in the process of
14 implementing this constitutional provision; and
15 WHEREAS, two (2) provisions of the Revised Codes of
16 Montana, 1947, sections 71-501 and 71-508 provide for aid to
17 dependent children who are deprived of parental support or
18 care by reason of the unemployment of the father and provide
19 funding for county programs of aid to dependent children who
20 are deprived of support and care by the unemployment of the
21 father; and
22 WHEREAS, the provisions of these two sections result in
23 different eligibility standards for fathers and mothers; and
24 WHEREAS, federal regulations are such as to prohibit
25 the elimination of the sexual discrimination in these

1 statutes.

2

3 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
4 OF REPRESENTATIVES OF THE STATE OF MONTANA:
5 That the Congress and the President of the United
6 States are requested to effect such changes in federal
7 statutes and regulations which will not distinguish between
8 persons because of sex and which will permit states to
9 eliminate such sexual discrimination as exists in statutes
10 such as sections 71-501 and 71-508, R.C.M. 1947.
11 BE IT FURTHER RESOLVED, that the Secretary of State is
12 instructed to send copies of this resolution to the
13 President of the United States, the Secretary of the United
14 States Senate, the Clerk of the United States House of
15 Representatives, the Secretary of Health, Education and
16 Welfare and to each Montana Congressman.

-End-

APPENDIX I-8

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
5 94-5-503 AND 94-5-603, R.C.M. 1947, TO REMOVE CERTAIN SEXUAL
6 DISTINCTIONS IN THE CRIMINAL LAW."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9 Section 1. Section 94-5-503, R.C.M. 1947, is amended
10 to read as follows:
11 "94-5-503. Sexual intercourse without consent. (1) A
12 ~~male~~ person who knowingly has sexual intercourse without
13 consent with a ~~female~~ person not his spouse commits the
14 offense of sexual intercourse without consent.
15 (2) A person convicted of sexual intercourse without
16 consent shall be imprisoned in the state prison for any term
17 not to exceed twenty (20) years.
18 (3) If the victim is less than sixteen (16) years old
19 and the offender is three (3) or more years older than the
20 victim, or if the offender inflicts bodily injury upon
21 anyone in the course of committing sexual intercourse
22 without consent, he shall be imprisoned in the state prison
23 for any term not to exceed forty (40) years.
24 (4) An act "in the course of committing sexual
25 intercourse without consent" shall include an attempt to

1 commit the offense or flight after the attempt or
2 commission."
3 Section 2. Section 94-5-603, R.C.M. 1947, is amended
4 to read as follows:
5 "94-5-603. Promoting prostitution. (1) A person
6 commits the offense of promoting prostitution if he
7 purposely or knowingly commits any of the following acts:
8 (a) owns, controls, manages, supervises, resides in or
9 otherwise keeps, alone or in association with others, a
10 house of prostitution or a prostitution business; or
11 (b) procures an inmate for a house of prostitution or
12 a place in a house of prostitution for one who would be an
13 inmate; or
14 (c) encourages, induces, or otherwise purposely causes
15 another to become or remain a prostitute; or
16 (d) solicits a person to patronize a prostitute; or
17 (e) procures a prostitute for a patron; or
18 (f) transports a person into or within this state with
19 the purpose to promote that person's engaging in
20 prostitution, or procures or pays for transportation with
21 that purpose; or
22 (g) leases or otherwise permits a place controlled by
23 the offender alone or in association with others, to be
24 regularly used for prostitution or for the procurement of
25 prostitution, or fails to make reasonable effort to abate

1 such use by ejecting the tenant, notifying law enforcement
2 authorities, or using other legally available means; or
3 (h) lives in whole or in part, upon the earnings of a
4 person engaging in prostitution, unless the person is the
5 prostitute's minor child or other legal dependent incapable
6 of self support.
7 (2) A person commits the offense of aggravated
8 promotion of prostitution if he purposely or knowingly
9 commits any of the following acts:
10 (a) Compels another to engage in or promote
11 prostitution.
12 (b) Promotes prostitution of a child under the age of
13 eighteen (18) years, whether or not he is aware of the
14 child's age.
15 (c) Promotes the prostitution of ~~his--wife~~ one's
16 spouse, child, ward or any person for whose care, protection
17 or support he is responsible.
18 (3) A person convicted of promoting prostitution shall
19 be fined not to exceed five hundred dollars ($500) or be
20 imprisoned in the county jail for any term not to exceed six
21 (6) months, or both. A person convicted of aggravated
22 promotion of prostitution shall be imprisoned in the state
23 prison for any term not to exceed twenty (20) years.
24 (4) Evidence.
25 On the issue whether a place is a house of prostitution

1 the following, in addition to all other admissible evidence,
2 shall be admissible:
3 (a) Its general repute; the repute of the persons who
4 reside in or frequent the place; or the frequency, timing
5 and duration of visits by nonresidents.
6 (b) Testimony of a person against his spouse shall be
7 admissible under this section."

-End-

APPENDIX I-9

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING
5 DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGIOUS CREED,
6 NATIONAL ORIGIN, ANCESTRY, AGE, SEX OR MARITAL STATUS IN
7 CREDIT TRANSACTIONS."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Definitions. As used in this act:
11 (1) "Commission" means the commission for human rights
12 provided for in section 82A-1015.
13 (2) "Staff" means the attorney and other person(s)
14 employed to work with the commission.
15 (3) "Credit" means the right granted by a creditor to
16 a person to defer payment of debt or to incur debt and defer
17 its payment, or purchase property or services and defer
18 payment therefor, including but not limited to the right to
19 incur and defer debt which is secured by residential real
20 property.
21 (4) "Creditor" means any person who regularly or as a
22 part of his business arranges for the extension of credit
23 for which the payment of a financial charge or interest is
24 required whether in connection with loans, sale of property
25 or services or otherwise.

1 (5) "Invitation to apply for credit" means any
2 communication, oral or written, by a creditor which
3 encourages or prompts an application for credit;
4 (6) "Application for credit" means any communication,
5 oral or written, by a person to a creditor requesting an
6 extension of credit to that person or to any other person,
7 and includes any procedure involving the renewal or
8 alteration of credit privileges or the changing of the name
9 of the person to whom credit is extended.
10 (7) "Extension of credit" means all acts incident to
11 the evaluation of an application for credit and the granting
12 of credit.
13 (8) "Credit sale" means any transaction with respect
14 to which credit is granted.
15 (9) "Credit transaction" means any invitation to apply
16 for credit, application for credit, extension of credit, or
17 credit sale.
18 Section 2. Unlawful discrimination in credit. It shall
19 be unlawful for any creditor to discriminate on the basis of
20 race, color, religious creed, national origin, ancestry,
21 age, sex, or marital status against any person in any credit
22 transaction.
23 Section 3. Complaint. (1) Any person claiming to be
24 aggrieved by a violation of section 2 of this act may make,
25 sign and file with the commission a verified complaint which

1 shall state the circumstances of such violation and the
2 particulars thereof and shall contain such other information
3 as may be required by the commission. Whenever the
4 commission or its staff has reason to believe that section 2
5 of this act has been or is being violated, the commission
6 may issue a complaint.
7 (2) The commission staff shall notify the commission
8 in writing of all complaints alleging violations of this act
9 filed with the commission. The commission shall act upon
10 complaints filed under this act when it meets pursuant to
11 section 64-308(2) to act on all complaints filed with the
12 commission.
13 (3) The staff shall informally investigate the matters
14 set out in a filed complaint promptly and impartially. If
15 the staff determines that the allegations are supported by
16 substantial evidence, it shall immediately try to eliminate
17 the discriminatory practice by conference, conciliation, and
18 persuasion.
19 (4) If the informal efforts of the staff are
20 unsuccessful it shall so inform the commission and arrange
21 for a hearing on the complaint in accordance with the
22 provisions of the Administrative Procedure Act.
23 (5) In investigating and hearing any complaint brought
24 under this act, the commission shall have the power to
25 compel the presence of any person or document which may be

1 relevant to the case in the manner prescribed in section
2 82-4220 of the Montana Administrative Procedure Act.
3 Section 4. Commission may seek temporary injunction.
4 The commission, acting in its own right or through its staff
5 may seek temporary injunctive relief in processing
6 complaints filed under this act in the manner prescribed in
7 section 64-308(3) for complaints generally.
8 Section 5. Power of commission on finding of
9 discrimination. (1) If the commission finds that a creditor
10 against whom a complaint was filed has engaged in the
11 discriminatory practice alleged in the complaint, it shall
12 order him to refrain from engaging in the discriminatory
13 conduct. The order may contain any of the conditions or
14 requirements provided for in section 64-309.
15 (2) The commission acting in its own right or through
16 its staff may seek injunctive relief in the manner
17 prescribed in section 64-310.
18 (3) If the commission finds that a person against whom
19 a complaint was filed has not engaged in the discriminatory
20 practice alleged in the complaint, it shall dismiss the
21 complaint.
22 Section 6. Injunction to enforce commission order. The
23 commission through its staff may petition the district court
24 in the county where the discriminatory practice occurred or
25 in which the respondent resides or transacts business to

1 enforce the commission's order by injunction.

2 Section 7. Individual action. Nothing in this act
3 shall preclude an individual from prosecuting a private
4 action in the district court alleging violation of the
5 provisions of this or any other act.

6 Section 8. Cooperation of state agencies with
7 commission. All state agencies shall cooperate with the
8 commission on human rights and its staff in the enforcement
9 of this act and shall comply with any request by the
10 commission for information which may be required for the
11 effective administration of this act.

12 Section 9. Rules and regulations. The commission may
13 promulgate all rules necessary for the implementation of
14 this act.

-End-

APPENDIX I-10

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE
5 'MONTANA CODE OF FAIR PRACTICES' RELATING TO THE
6 NONPARTICIPATION OF THE GOVERNMENT OF THE STATE OF MONTANA
7 IN DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGIOUS
8 CREED, SEX, AGE, NATIONAL ORIGIN, OR ANCESTRY."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Employment of state and local government
12 personnel without regard for race, color, religious creed,
13 sex, age, national origin, or ancestry. (1) State and local
14 government officials and supervisory personnel shall
15 recruit, appoint, assign, train, evaluate, and promote
16 personnel on the basis of merit and qualifications, without
17 regard to race, color, religious creed, sex, age, national
18 origin, or ancestry.
19 (2) All state and local governmental agencies shall:
20 (a) promulgate written directives to carry out this
21 policy and to guarantee equal employment opportunities at
22 all levels of state government;
23 (b) regularly review their personnel practices to
24 assure compliance; and
25 (c) conduct continuing orientation and training

1 programs with emphasis on human relations and fair
2 employment practices.
3 (3) The department of administration shall insure that
4 the entire examination process, including qualifications
5 appraisal, is free from bias.
6 (4) Appointing authorities shall exercise care to
7 insure utilization of minority group persons.
8 Section 2. Nonparticipation in discriminatory
9 practices. All services of every state and local
10 governmental agency shall be performed without
11 discrimination based upon race, color, religious creed, sex,
12 age, national origin, or ancestry. No state or local
13 facility shall be used in the furtherance of any
14 discriminatory practice, nor shall any state or local agency
15 become a party to any agreement, arrangement, or plan which
16 has the effect of sanctioning discriminatory practices.
17 Each state and local agency shall analyze all of its
18 operations to ascertain possible instances of noncompliance
19 with the policy of this act and shall initiate comprehensive
20 programs to remedy any defect found to exist.
21 Section 3. Public contracts. Every state or local
22 contract or subcontract for construction of public buildings
23 or for other public work or for goods and services shall
24 contain a provision that there shall be no discrimination on
25 the basis of race, color, religious creed, sex, age,

1 national origin, or ancestry by the persons performing the
2 contract.
3 Section 4. Employment requests--cooperation with
4 commission for human rights programs--enforcement of the
5 policy of the act. (1) All state and local governmental
6 agencies, including educational institutions, which provide
7 employment referrals or placement services to public or
8 private employers, shall accept job orders on a fair
9 practice basis. Any job request indicating an intention to
10 exclude any person because of race, color, religious creed,
11 sex, age, national origin, or ancestry shall be rejected.
12 (2) All state and local governmental agencies shall
13 cooperate in programs developed by the commission for human
14 rights initiated for the purpose of broadening the base of
15 job recruitment and shall further cooperate with all
16 employers and unions providing such programs.
17 (3) The department of labor shall cooperate with the
18 commission for human rights in encouraging and enforcing
19 employers and labor unions to comply with the policy of this
20 act and promote equal employment opportunities.
21 Section 5. Licensing. No state or local department,
22 board, or agency shall grant, deny, or revoke the license or
23 charter of any person on the grounds of race, color,
24 religious creed, sex, age, national origin, or ancestry.
25 Each state and local agency shall take such appropriate

1 action in the exercise of its licensing or regulatory power
2 as will assure equal treatment of all persons and eliminate
3 discrimination and enforce compliance with the policy of
4 this act.
5 Section 6. Public accomodations. No state or local
6 department, board, or agency shall permit any violation of
7 the public accomodations provisions of section 64-306,
8 R.C.M. 1947.
9 Section 7. State programs. All education, counseling,
10 and vocational guidance programs and all apprenticeship and
11 on-the-job training programs of state or local agencies, or
12 in which state or local agencies participate, shall be open
13 to all qualified persons, without regard to race, color,
14 religious creed, sex, age, national origin, or ancestry.
15 Such programs shall be conducted to encourage the fullest
16 development of the interests, aptitudes, skills, and
17 capacities of all students and trainees, with special
18 attention to the problems of culturally deprived,
19 educationally handicapped, or economically disadvantaged
20 persons. Expansion of training opportunities under these
21 programs shall be encouraged to involve larger numbers of
22 participants from those segments of the labor force where
23 the need for upgrading levels of skill is greatest.
24 Section 8. Distribution of funds, benefits, loans, and
25 financial assistance. Race, color, religious creed, sex,

1 age, national origin, or ancestry shall not be considered as
2 limiting factors in state or locally administered programs
3 involving the distribution of funds to qualify applicants
4 for benefits authorized by law; nor shall state agencies
5 provide grants, loans, or other financial assistance to
6 public agencies, private institutions, or organizations
7 which engage in discriminatory practices.
8 Section 9. Cooperation with the commission for human
9 rights. All state and local agencies shall cooperate with
10 the commission for human rights in the commission's
11 enforcement and educational programs. They shall comply
12 with the commission's request for information concerning
13 practices inconsistent with the state policy against
14 discrimination and shall consider its recommendations for
15 effectuating and implementing that policy. The commission
16 for human rights shall continue to augment its enforcement
17 and education programs which seek to eliminate all
18 discrimination.
19 Section 10. Annual reports. All departments,
20 agencies, commissions, and other bodies of the state
21 government shall include in their annual reports to the
22 governor, activities undertaken in the past year to
23 effectuate this act. Such reports shall cover both internal
24 activities and external relations with the public or with
25 other state agencies and shall contain other information as

1 specifically requested by the governor.

2 Section 11. Local governmental units. Local
3 governmental units affected by this act include all
4 political subdivisions of the state including school
5 districts.

6 Section 12. Age distinctions. Nothing in this act
7 shall prohibit any public or private employer (1) from
8 enforcing a differentiation based on age where age is a bona
9 fide occupational qualification reasonably necessary to the
10 normal operation of the particular business, or where the
11 differentiation is based on reasonable factors other than
12 age; or (2) from observing the terms of a bona fide
13 seniority system or any bona fide employee benefit plan such
14 as a retirement, pension or insurance plan, which is not a
15 subterfuge to evade the purposes of this act, except that no
16 such employee benefit plan shall excuse the failure to hire
17 any individual; or (3) from discharging or otherwise
18 disciplining an individual for good cause.

19 Section 13. Judicial review. (1) Any person claiming
20 to be aggrieved by a violation of any provision of this act
21 may petition the district court in the district where the
22 complainant resides or where the alleged violation occurred
23 for appropriate relief, and the court may grant such relief,
24 by injunction or otherwise, as it considers just and
25 suitable.

1 (2) Actions under this section are original actions.

2 (3) Class actions pursuant to the Montana Rules of

3 Civil Procedure are maintainable under this act.

-End-

APPENDIX I-11

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MATERNITY

5 LEAVE TO PUBLIC AND PRIVATE EMPLOYEES."

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Definitions. (1) "Commissioner" means the

9 commissioner of labor and industry.

10 (2) "Employer" means any public or private employer.

11 Section 2. Denial of maternity leave unlawful. (1) It

12 shall be unlawful for an employer, by himself or his agent,

13 (a) to terminate a woman's employment because of her

14 pregnancy, or

15 (b) to refuse to grant to the employee a reasonable

16 leave of absence for such pregnancy, or

17 (c) to deny to the employee, who is disabled as a

18 result of pregnancy, any compensation to which she is

19 entitled as a result of the accumulation of disability or

20 leave benefits accrued pursuant to plans maintained by her

21 employer.

22 (2) Upon signifying her intent to return at the end of

23 her leave of absence, such employee shall be reinstated to

24 her original job or to an equivalent position with

25 equivalent pay and accumulated seniority, retirement, fringe

1 benefits, and other service credits unless, in the case of a
2 private employer, the employer's circumstances have so
3 changed as to make it impossible or unreasonable to do so.
4 (3) The provisions of this section shall not apply to:
5 (a) termination of employment where the employee is
6 thereupon entitled to benefits under the terms or conditions
7 of any bona fide retirement or pension plan or collective
8 bargaining agreement between the employer and a bona fide
9 labor organization,
10 (b) operation of the terms or conditions of any bona
11 fide retirement or pension plan,
12 (c) operation of the terms or conditions of any bona
13 fide group or employee insurance plan, or
14 (d) operation of any bona fide apprenticesnip system
15 or plan.
16 Section 3. Complaint--how filed. A person claiming to
17 be aggrieved by a violation of section 2 of this act may
18 make, sign, and file a verified complaint with the
19 commissioner of labor and industry which shall state the
20 circumstances of the violation and the particulars thereof
21 and shall contain such other information as may be requireo
22 by the commissioner. In addition, the commissioner whenever
23 he has reason to believe that section 2 of this act has been
24 or is being violated, may issue a complaint.
25 If, upon all the evidence, the commissioner finds that

1 a respondent has engaged in a violation of section 2 of this
2 act, he shall state his findings of fact and shall order the
3 respondent to reinstate the complainant if she so desires
4 and to pay to the complainant the damages resulting from the
5 violation. If, upon all the evidence, the commissioner
6 finds that the respondent has not engaged in a violation of
7 section 2 of this act, he shall state his findings of fact
8 and shall dismiss the complaint.
9 Section 4. Enforcement. The commissioner or his
10 authorized representatives may enter and inspect such
11 places, question such employees, and investigate such facts,
12 conditions, or matters as they consider appropriate, to
13 determine whether any person has violated any provision of
14 this act or any regulation issued hereunder or which may aid
15 in the enforcement of the provisions of this act.
16 The commissioner or his authorized representatives may
17 administer oaths and examine witnesses under oath, issue
18 subpoenas, compel the attendance of witnesses, and the
19 production of papers, books, accounts, records, payrolls,
20 documents, and testimony, and take depositions and
21 affidavits in any proceeding before the commissioner.
22 Section 5. Regulations. The commissioner shall make
23 and revise administrative regulations to carry out the
24 purposes of this act. Rulemaking under this act shall
25 comply with the provisions of the Montana Administrative

1 Procedure Act.

2 Section 6. Individual action. Nothing in this act
3 shall preclude an individual from prosecuting a private
4 action in the district court alleging violation of the
5 provisions of this act or any other act.

-End-

APPENDIX I-12

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE
6 COMMITTEE ON PRIORITIES TO ASSIGN AN APPROPRIATE STANDING
7 COMMITTEE TO MAKE A COMPREHENSIVE STUDY OF MONTANA'S
8 INSURANCE LAWS TO DETERMINE IF THEY DISCRIMINATE AGAINST AN
9 INDIVIDUAL ON THE BASIS OF SEX AND TO REPORT ITS FINDINGS
10 AND RECOMMENDATIONS TO THE FORTY-FIFTH LEGISLATURE.

11

12 WHEREAS, article II, section 4, of the Montana
13 constitution prohibits discrimination against any person in
14 the exercise of his civil or political rights on account of
15 sex, and

16 WHEREAS, during a study of Montana laws to eliminate
17 sexual discrimination pursuant to HJR 62 (1974) and SJR 68
18 (1974), the interim subcommittee on judiciary determined
19 that insurance laws need further study to insure that they
20 do not unconstitutionally distinguish on the basis of sex,
21 because insurance laws are complex and governed by national
22 as well as state policies and organizations.

23

24 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
25 OF REPRESENTATIVES OF THE STATE OF MONTANA:

1 That the appropriate standing committee designated by
2 the committee on priorities be requested to undertake a
3 comprehensive study of the state's insurance laws with
4 regard to possible sexual discrimination against an
5 individual in such laws and in actuarial tables used to set
6 rates from them. The committee shall consult various
7 industry representatives, the state auditor, and any other
8 appropriate organizations in its determinations.
9 BE IT FURTHER RESOLVED, that all state agencies shall
10 cooperate fully with the committee in its deliberations.
11 BE IT FURTHER RESOLVED, that the committee shall report
12 its findings along with recommendations and remedial
13 legislation to the Forty-fifth Legislature.

-End-

APPENDIX I-13

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING IT UNLAWFUL TO
5 PATRONIZE A PROSTITUTE."

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
8 Section 1. Patronizing a prostitute. (1) A person
9 commits the offense of patronizing a prostitute by:
10 (a) paying a prostitute to engage in non-marital
11 sexual intercourse with such person; or
12 (b) entering or remaining in any house of prostitution
13 for the purpose of paying a prostitute to engage in
14 non-marital sexual intercourse with such person.
15 (2) A person convicted of patronizing a prostitute
16 shall be fined not more than one hundred dollars ($100) or
17 imprisoned not more than three (3) months or both.

-End-

APPENDIX II

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE
5 'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE
6 PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS
7 TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M.
8 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1
9 THROUGH 93-2901-11, R.C.M. 1947."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Short title. This act may be cited as the
13 "Uniform Parentage Act."
14 Section 2. Parent and child relationship defined. As
15 used in this act, "Parent and child relationship" means the
16 legal relationship existing between a child and his natural
17 or adoptive parents incident to which the law confers or
18 imposes rights, privileges, duties, and obligations. It
19 includes the mother and child relationship and the father
20 and child relationship.
21 Section 3. Relationship not dependent on marriage. The
22 parent and child relationship extends equally to every child
23 and to every parent, regardless of the marital status of the
24 parents.
25 Section 4. How parent and child relationship

1 established. The parent and child relationship between a
2 child and
3 (1) the natural mother may be established by proof of
4 her having given birth to the child, or under this act;
5 (2) the natural father may be established under this
6 act;
7 (3) an adoptive parent may be established by proof of
8 adoption.
9 Section 5. Presumption of paternity. (1) A man is
10 presumed to be the natural father of a child if:
11 (a) he and the child's natural mother are or have been
12 married to each other and the child is born during the
13 marriage, or within three hundred (300) days after the
14 marriage is terminated by death, annulment, declaration of
15 invalidity, or divorce, or after a decree of separation is
16 entered by a court;
17 (b) before the child's birth, he and the child's
18 natural mother have attempted to marry each other by a
19 marriage solemnized in apparent compliance with law,
20 although the attempted marriage is or could be declared
21 invalid, and,
22 (i) if the attempted marriage could be declared
23 invalid only by a court, the child is born during the
24 attempted marriage, or within three hundred (300) days after
25 its termination by death, annulment, declaration of

1 invalidity, or divorce; or

2 (ii) if the attempted marriage is invalid without a
3 court order, the child is born within three hundred (300)
4 days after the termination of cohabitation;

5 (c) after the child's birth, he and the child's
6 natural mother have married, or attempted to marry, each
7 other by a marriage solemnized in apparent compliance with
8 law, although the attempted marriage is or could be declared
9 invalid, and

10 (i) he has acknowledged his paternity of the child in
11 writing filed with the department of health and
12 environmental sciences or with the district court for the
13 county where he resides, or

14 (ii) with his consent, he is named as the child's
15 father on the child's birth certificate, or

16 (iii) he is obligated to support the child under a
17 written voluntary promise or by court order;

18 (d) while the child is under the age of majority, he
19 receives the child into his home and openly holds out the
20 child as his natural child; or

21 (e) he acknowledges his paternity of the child in a
22 writing filed with the department of health and
23 environmental sciences or with the district court of the
24 county where he resides, which court or department shall
25 promptly inform the mother of the filing of the

1 acknowledgment, and she does not dispute the acknowledgment
2 within a reasonable time after being informed thereof, in a
3 writing filed with the department of health and
4 environmental sciences or with the district court of the
5 county where the acknowledgment was filed. If another man
6 is presumed under this section to be the child's father,
7 acknowledgment may be effected only with the written consent
8 of the presumed father or after the presumption has been
9 rebutted.
10 (2) A presumption under this section may be rebutted
11 in an appropriate action only by clear and convincing
12 evidence. If two (2) or more presumptions arise which
13 conflict with each other, the presumption which on the facts
14 is founded on the weightier considerations of policy and
15 logic controls. The presumption is rebutted by a court
16 decree establishing paternity of the child by another man.
17 Section 6. Artificial insemination. (1) If, under the
18 supervision of a licensed physician and with the consent of
19 her husband, a wife is inseminated artificially with semen
20 donated by a man not her husband, the husband is treated in
21 law as if he were the natural father of a child thereby
22 conceived. The husband's consent must be in writing and
23 signed by him and his wife. The physician shall certify
24 their signatures and the date of the insemination, and file
25 the husband's consent with the department of health and

1 environmental sciences, where it shall be kept confidential
2 and in a sealed file. However, the physician's failure to
3 do so does not affect the father and child relationship.
4 All papers and records pertaining to the insemination,
5 whether part of the permanent record of a court or of a file
6 held by the supervising physician or elsewhere, are subject
7 to inspection only upon an order of the court for good cause
8 shown.

9 (2) The donor of semen provided to a licensed
10 physician for use in artificial insemination of a married
11 woman other than the donor's wife is treated in law as if he
12 were not the natural father of a child thereby conceived.

13 Section 7. Determination of father and child
14 relationship--who may bring action--when action may be
15 brought. (1) A child, his natural mother, or a man presumed
16 to be his father under paragraph (a), (b), or (c) of section
17 5(1), may bring an action

18 (a) at any time for the purpose of declaring the
19 existence of the father and child relationship presumed
20 under paragraph (a), (b), or (c) of section 5(1); or

21 (b) for the purpose of declaring the nonexistence of
22 the father and child relationship presumed under paragraph
23 (a), (b), or (c) of section 5(1) only if the action is
24 brought within a reasonable time after obtaining knowledge
25 of relevant facts, but in no event later than five (5) years

1 after the child's birth. After the presumption has been
2 rebutted, paternity of the child by another man may be
3 determined in the same action, if he has been made a party.
4 (2) Any interested party may bring an action at any
5 time for the purpose of determining the existence or
6 nonexistence of the father and child relationship presumed
7 pursuant to section 5.
8 (3) An action to determine the existence of the father
9 and child relationship with respect to a child who has no
10 presumed father under section 5 may be brought by the child,
11 the mother or personal representative of the child, the
12 department of social and rehabilitation services or the
13 appropriate county welfare department, the personal
14 representative or a parent of the mother if the mother has
15 died, a man alleged or alleging himself to be the father, or
16 the personal representative or a parent of the alleged
17 father if the alleged father has died or is a minor.
18 (4) Regardless of its terms, an agreement, other than
19 an agreement approved by the court in accordance with
20 section 14(2), between an alleged or presumed father and the
21 mother or child, does not bar an action under this section.
22 (c) If an action under this section is brought before
23 the birth of the child, all proceedings shall be stayed
24 until after the birth, except service of process and the
25 taking of depositions to perpetuate testimony.

1 Section 8. Statute of limitations. An action to
2 determine the existence of the father and child relationship
3 as to a child who has no presumed father under section 5 may
4 not be brought later than three (3) years after the birth of
5 the child, or later than three (3) years after the effective
6 date of this act, whichever is later. However, an action
7 brought by or on behalf of a child whose paternity has not
8 been determined is not barred until three (3) years after
9 the child reaches the age of majority. Sections 7 and 8 do
10 not extend the time within which a right of inheritance or a
11 right to a succession may be asserted beyond the time
12 provided by law relating to distribution and closing of
13 decedents' estates or to the determination of heirship, or
14 otherwise.
15 Section 9. Jurisdiction--venue. (1) The district court
16 has jurisdiction of an action brought under this act. The
17 action may be joined with an action for divorce, annulment,
18 separate maintenance, or support.
19 (2) A person who has sexual intercourse in this state
20 thereby submits to the jurisdiction of the courts of this
21 state as to an action brought under this act with respect to
22 a child who may have been conceived by that act of
23 intercourse. In addition to any other method provided by
24 rule or statute, including Rule 4B of the Montana Rules of
25 Civil Procedure, personal jurisdiction may be acquired by

1 service in accordance with Rule 4B of the Montana Rules of
2 Civil Procedure.
3 (3) The action may be brought in the county in which
4 the child or the alleged father resides or is found or, if
5 the father is deceased, in which proceedings for probate of
6 his estate have been or could be commenced.
7 Section 10. Parties. The child shall be made a party
8 to the action. If he is a minor he shall be represented by
9 his general guardian or a guardian ad litem appointed by the
10 court. The child's mother or father may not represent the
11 child as guardian or otherwise. The court may appoint the
12 department of social and rehabilitation services or the
13 appropriate county welfare department as guardian ad litem
14 for the child. The natural mother, each man presumed to be
15 the father under section 5, and each man alleged to be the
16 natural father, shall be made parties or, if not subject to
17 the jurisdiction of the court, shall be given notice of the
18 action in a manner prescribed by the court and an
19 opportunity to be heard. The court may align the parties.
20 Section 11. Pre-trial proceedings. (1) As soon as
21 practicable after an action to declare the existence or
22 nonexistence of the father and child relationship has been
23 brought, an informal hearing shall be held. The court may
24 order that the hearing be held before a referee. The public
25 shall be barred from the hearing. A record of the

1 proceeding or any portion thereof shall be kept if any party
2 requests, or the court orders. Rules of evidence need not
3 be observed.
4 (2) Upon refusal of any witness, including a party, to
5 testify under oath or produce evidence, the court may order
6 him to testify under oath and produce evidence concerning
7 all relevant facts. If the refusal is upon the ground that
8 his testimony or evidence might tend to incriminate him, the
9 court may grant him immunity from all criminal liability on
10 account of the testimony or evidence he is required to
11 produce. An order granting immunity bars prosecution of the
12 witness for any offense shown in whole or in part by
13 testimony or evidence he is required to produce, except for
14 perjury committed in his testimony. The refusal of a
15 witness, who has been granted immunity, to obey an order to
16 testify or produce evidence is a civil contempt of the
17 court.
18 (3) Testimony of a physician concerning the medical
19 circumstances of the pregnancy and the condition and
20 characteristics of the child upon birth is not privileged.
21 Section 12. Blood tests. (1) The court may, and upon
22 request of a party shall, require the child, mother, or
23 alleged father to submit to blood tests. The tests shall be
24 performed by an expert qualified as an examiner of blood
25 types, appointed by the court.

1 (2) The court, upon reasonable request by a party,
2 shall order that independent tests be performed by other
3 experts qualified as examiners of blood types.
4 (3) In all cases, the court shall determine the number
5 and qualifications of the experts.
6 Section 13. Evidence relating to paternity. Evidence
7 relating to paternity may include:
8 (1) evidence of sexual intercourse between the mother
9 and alleged father at any possible time of conception;
10 (2) an expert's opinion concerning the statistical
11 probability of the alleged father's paternity based upon the
12 duration of the mother's pregnancy;
13 (3) blood test results, weighted in accordance with
14 evidence, if available, of the statistical probability of
15 the alleged father's paternity;
16 (4) medical or anthropological evidence relating to
17 the alleged father's paternity of the child based on tests
18 performed by experts. If a man has been identified as a
19 possible father of the child, the court may, and upon
20 request of a party shall, require the child, the mother and
21 the man to submit to appropriate tests; and
22 (5) all other evidence relevant to the issue of
23 paternity of the child.
24 Section 14. Pre-trial recommendations. (1) On the
25 basis of the information produced at the pre-trial hearing,

1 the judge or referee conducting the hearing shall evaluate
2 the probability of determining the existence or nonexistence
3 of the father and child relationship in a trial and whether
4 a judicial declaration of the relationship would be in the
5 best interest of the child. On the basis of the evaluation,
6 an appropriate recommendation for settlement shall be made
7 to the parties, which may include any of the following:
8 (a) that the action be dismissed with or without
9 prejudice;
10 (b) that the matter be compromised by an agreement
11 among the alleged father, the mother, and the child, in
12 which the father and child relationship is not determined
13 but in which a defined economic obligation is undertaken by
14 the alleged father in favor of the child and, if
15 appropriate, in favor of the mother, subject to approval by
16 the judge or referee conducting the hearing. In reviewing
17 the obligation undertaken by the alleged father in a
18 compromise agreement, the judge or referee conducting the
19 hearing shall consider the best interest of the child in the
20 light of the factors enumerated in section 16(5), discounted
21 by the improbability, as it appears to him, of establishing
22 the alleged father's paternity or nonpaternity of the child
23 in a trial of the action. In the best interest of the
24 child, the court may order that the alleged father's
25 identity be kept confidential. In that case, the court may

1 designate a person or agency to receive from the alleged
2 father and disburse on behalf of the child all amounts paid
3 by the alleged father in fulfillment of obligations imposed
4 on him; and
5 (c) that the alleged father voluntarily acknowledge
6 his paternity of the child.
7 (2) If the parties accept a recommendation made in
8 accordance with subsection (1), judgment shall be entered
9 accordingly.
10 (3) If a party refuses to accept a recommendation made
11 under subsection (1) and blood tests have not been taken,
12 the court shall require the parties to submit to blood
13 tests, if practicable. Thereafter the judge or referee
14 shall make an appropriate final recommendation. If a party
15 refuses to accept the final recommendation, the action shall
16 be set for trial.
17 (4) The guardian ad litem may accept or refuse to
18 accept a recommendation under this section.
19 (5) The informal hearing may be terminated and the
20 action set for trial if the judge or referee conducting the
21 hearing finds unlikely that all parties would accept a
22 recommendation he might make under subsection (1) or (3).
23 Section 15. Civil action. (1) An action under this act
24 is a civil action governed by the rules of civil procedure.
25 The mother of the child and the alleged father are competent

1 to testify and may be compelled to testify. Section 11,
2 subsections (2) and (3) and sections 12 and 13 apply to all
3 action brought under this act.
4 (2) Testimony relating to sexual access to the mother
5 by an unidentified man at any time or by an identified man
6 at a time other than the probable time of conception of the
7 child is inadmissible in evidence, unless offered by tne
8 mother.
9 (3) In an action against an alleged father, evidence
10 offered by him with respect to a man who is not subject to
11 the jurisdiction of the court concerning his sexual
12 intercourse with the mother at or about the probable time of
13 conception of the child is admissible in evidence only if
14 the alleged father has undergone and made available to the
15 court blood tests the results of which do not exclude the
16 possibility of his paternity of the child. A man who is
17 identified and is subject to the jurisdiction of the court
18 shall be made a defendant in the action.
19 Section 16. Judgment or order. (1) The judgment or
20 order of the court determining the existence or nonexistence
21 of the parent and child relationship is determinative for
22 all purposes.
23 (2) If the judgment or order of the court is at
24 variance with the child's birth certificate, the court shall
25 order that a substitute birth certificate be issued under

1 section 24.

2 (3) The judgment or order may contain any other
3 provision directed against the appropriate party to the
4 proceeding, concerning the duty of support, the custody and
5 guardianship of the child, visitation privileges with the
6 child, the furnishing of bond or other security for the
7 payment of the judgment, or any other matter in the best
8 interest of the child. The judgment or order may direct the
9 father to pay the reasonable expenses of the mother's
10 pregnancy and confinement.

11 (4) Support judgments or orders ordinarily shall be
12 for periodic payments which may vary in amount. In the best
13 interest of the child, a lump sum payment or the purchase of
14 an annuity may be ordered in lieu of periodic payments of
15 support. The court may limit the father's liability for
16 past support of the child to the proportion of the expenses
17 already incurred that the court deems just.

18 (5) In determining the amount to be paid by a parent
19 for support of the child and the period during which the
20 duty of support is owed, a court enforcing the obligation of
21 support shall consider all relevant facts, including:

22 (a) the needs of the child;

23 (b) the standard of living and circumstances of the
24 parents;

25 (c) the relative financial means of the parents;

1 (d) the earning ability of the parents;
2 (e) the need and capacity of the child for education,
3 including higher education;
4 (f) the age of the child;
5 (g) the financial resources and the earning ability of
6 the child;
7 (h) the responsibility of the parents for the support
8 of others; and
9 (i) the value of services contributed by the custodial
10 parent.
11 Section 17. Costs. The court may order reasonable fees
12 of counsel, experts, and the child's guardian ad litem, and
13 other costs of the action and pre-trial proceedings,
14 including blood tests, to be paid by the parties in
15 proportions and at times determined by the court. The court
16 may order the proportion of any indigent party to be paid
17 out of the treasury of the county in which the action is
18 brought.
19 Section 18. Enforcement of judgment or order. (1) If
20 existence of the father and child relationship is declared,
21 or paternity or a duty of support has been acknowledged or
22 adjudicated under this act or under prior law, the
23 obligation of the father may be enforced in the same or
24 other proceedings by the mother, the child, the public
25 authority that has furnished or may furnish the reasonable

1 expenses of pregnancy, confinement, education, support, or
2 funeral, or by any other person, including a private agency,
3 to the extent he has furnished or is furnishing these
4 expenses.
5 (2) The court may order support payments to be made to
6 the mother, the clerk of the court, or a person,
7 corporation, or agency designated to administer them for the
8 benefit of the child under the supervision of the court.
9 (3) Willful failure to obey the judgment or order of
10 the court is a civil contempt of the court. All remedies
11 for the enforcement of judgments apply.
12 Section 19. Modification of judgment or order. The
13 court has continuing jurisdiction to modify or revoke a
14 judgment or order
15 (1) for future education and support, and
16 (2) with respect to matters listed in section 16,
17 subsections (3) and (4) and section 18(2), except that a
18 court entering a judgment or order for the payment of a lump
19 sum or the purchase of an annuity under section 16(4) may
20 specify that the judgment or order may not be modified or
21 revoked.
22 Section 20. Rights to counsel--free transcript on
23 appeal. (1) At the pre-trial hearing and in further
24 proceedings, any party may be represented by counsel. The
25 court shall appoint counsel for a party who is financially

1 unable to obtain counsel.

2 (2) If a party is financially unable to pay the cost
3 of a transcript, the court shall furnish on request a
4 transcript for purposes of appeal.

5 Section 21. Hearings and records--confidentiality.
6 Notwithstanding any other law concerning public hearings and
7 records, any hearing or trial held under this act shall be
8 held in closed court without admittance of any person other
9 than those necessary to the action or proceeding. All
10 papers and records, other than the final judgment,
11 pertaining to the action or proceeding, whether part of the
12 permanent record of the court or of a file in any agency of
13 the state or of any political subdivision or elsewhere, are
14 subject to inspection only upon consent of the court and all
15 interested persons, or in exceptional cases only upon an
16 order of the court for good cause shown.

17 Section 22. Action to declare mother and child
18 relationship. Any interested party may bring an action to
19 determine the existence or nonexistence of a mother and
20 child relationship. Insofar as practicable, the provisions
21 of this act applicable to the father and child relationship
22 apply.

23 Section 23. Promise to render support. (1) Any promise
24 in writing to furnish support for a child, growing out of a
25 supposed or alleged father and child relationship, does not

1 require consideration and is enforceable according to its
2 terms, subject to section 7(4).
3 (2) In the best interest of the child or the mother,
4 the court may, and upon the provision's request shall, order
5 the promise to be kept in confidence and designate a person
6 or agency to receive and disburse on behalf of the child all
7 amounts paid in performance of the promise.
8 Section 24. Birth records. (1) Upon order of a court
9 of this state or upon request of a court of another state,
10 the department of health and environmental sciences shall
11 prepare a substitute certificate of birth consistent with
12 the findings of the court and shall substitute the new
13 certificate for the original certificate of birth.
14 (2) The fact that the father and child relationship
15 was declared after the child's birth shall not be
16 ascertainable from the new certificate but the actual place
17 and date of birth shall be shown.
18 (3) The evidence upon which the new certificate was
19 made and the original birth certificate shall be kept in a
20 sealed and confidential file and shall be subject to
21 inspection only upon consent of the court and all interested
22 persons, or in exceptional cases only upon an order of the
23 court for good cause shown.
24 Section 25. Custodial proceedings. (1) If a mother
25 relinquishes or proposes to relinquish for adoption a child

1 who has:
2 (a) a presumed father under section 5(1),
3 (b) a father whose relationship to the child has been
4 determined by a court, or
5 (c) a father as to whom the child is a legitimate
6 child under prior law of this state or under the law of
7 another jurisdiction, the father shall be given notice of
8 the adoption proceeding and have the rights provided under
9 sections 61-205 and 61-206, R.C.M. 1947, unless the father's
10 relationship to the child has been previously terminated or
11 determined by a court not to exist.
12 (2) If a mother relinquishes or proposes to relinquish
13 for adoption a child who does not have:
14 (a) a presumed father under section 5(1),
15 (b) a father whose relationship to the child has been
16 determined by a court, or
17 (c) a father as to whom the child is a legitimate
18 child under prior law of this state or under the law of
19 another jurisdiction, or if a child otherwise becomes the
20 subject of an adoption proceedings, the agency or person to
21 whom the child has been or is to be relinquished, or the
22 mother or the person having custody of the child, shall file
23 a petition in the district court to terminate the parental
24 rights of the father, unless the father's relationship to
25 the child has been previously terminated or determined not

1 to exist by a court.

2 (3) In an effort to identify the natural father, the
3 court shall cause inquiry to be made of the mother and any
4 other appropriate person. The inquiry shall include the
5 following: whether the mother was married at the time of
6 conception of the child at any time thereafter; whether the
7 mother was cohabiting with a man at the time of conception
8 or birth of the child; whether the mother has received
9 support payments or promises of support with respect to the
10 child or in connection with her pregnancy; or whether any
11 man has formally or informally acknowledged or declared his
12 possible paternity of the child.

13 (4) If, after the inquiry, the natural father is
14 identified to the satisfaction of the court, or if more than
15 one man is identified as a possible father, each shall be
16 given notice of the proceeding in accordance with subsection
17 (6) of this section. If any of them fails to appear, or, if
18 appearing, fails to claim custodial rights, his parental
19 rights with reference to the child shall be terminated. If
20 the natural father or a man representing himself to be the
21 natural father, claims custodial rights, the court shall
22 proceed to determine custodial rights.

23 (5) If, after the inquiry, the court is unable to
24 identify the natural father or any possible natural father
25 and no person has appeared claiming to be the natural father

1 and claiming custodial rights, the court shall enter an
2 order terminating the unknown natural father's parental
3 rights with reference to the child. Subject to the
4 disposition of an appeal, upon the expiration of six (6)
5 months after an order terminating parental rights is issued
6 under this subsection, the order cannot be questioned by any
7 person, in any manner, or upon any ground, including fraud,
8 misrepresentation, failure to give any required notice, or
9 lack of jurisdiction of the parties or of the subject
10 matter.
11 (6) Notice of the proceeding shall be given to every
12 person identified as the natural father or a possible
13 natural father in the manner appropriate under rules of
14 civil procedure for the service of process in a civil action
15 in this state, or in any manner the court directs. Proof of
16 giving the notice shall be filed with the court before the
17 petition is heard. If no person has been identified as the
18 natural father or a possible father, the court, on the basis
19 of all information available, shall determine whether
20 publication or public posting of notice of the proceeding is
21 likely to lead to identification and, if so, shall order
22 publication or public posting at times and in places and
23 manner it deems appropriate.
24 Section 26. Uniformity of application and
25 construction. This act shall be applied and construed to

1 effectuate its general purpose to make uniform the law with
2 respect to the subject of this act among states enacting it.
3 Section 27. Section 61-105, R.C.M. 1947, is amended to
4 read as follows:
5 "61-105. Custody of legitimate child. The father and
6 mother of ~~a legitimate~~ an unmarried minor child are equally
7 entitled to its custody, services, and earnings. If either
8 parent be dead, or unable, or refuse to take the custody, or
9 has abandoned his or her family, the other is entitled to
10 its custody, services, and earnings."
11 Section 28. Section 61-205, R.C.M. 1947, is amended to
12 read as follows:
13 "61-205. Persons required to consent to the adoption.
14 An adoption of a child may be decreed when there have been
15 filed written consents to adoption executed by:
16 (1) Both parents, if living, or the surviving parent,
17 of a ~~legitimate~~ child; provided, that consent shall not be
18 required from a father or mother,
19 (a) adjudged guilty by a court of competent
20 jurisdiction of physical cruelty toward said child; or,
21 (b) adjudged to be an habitual drunkard; or,
22 (c) who has been judicially deprived of the custody of
23 the child on account of cruelty or neglect toward the child;
24 or,
25 (d) who has, in the state of Montana, or in any other

state of the United States, willfully abandoned such child; or,

(e) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency, or the state department of public welfare of the state of Montana for a period of one (1) year without contributing to the support of said child during said period, if able; or,

(f) if it is proven to the satisfaction of the court that said father or mother, if able, has not contributed to the support of said child during a period of one (1) year before the filing of a petition for adoption; or (an adoption of a child may be decreed when there have been filed written consents to adoption executed by).

~~(2)--The--mother,--alone,-if-the-child-is-illegitimate; or,~~

~~(3)~~-(2) The legal guardian of the person of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,

~~(4)~~-(3) The executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated, or if both parents are dead, and custody of the child has been

legally vested in such agency with authority to consent to adoption of the child; or,

~~(5)~~-(4) Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of public welfare or of an agency, or witnessed by a representative of the court."

Section 29. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 30. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 31. Repeal. Sections 93-2901-1 through 93-2901-11, 61-103, and 61-108, R.C.M. 1947, are repealed.

-End-

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; BY REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH 48-203, 48-206 AND 48-207, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Marriage and Divorce Act."

Section 2. Purposes of act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships;

(3) promote the amicable settlement of disputes that

have arisen between parties to a marriage;

(4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(5) make reasonable provision for spouse and minor children during and after litigation; and

(6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 3. Uniformity of application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 4. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this act is valid in this state. A marriage may be contracted, maintained, invalidated or dissolved only as provided by the law of this state.

Section 5. Form of application, license, certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the

following information:

(a) name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

Section 6. License to marry. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one (1) party has appeared before the clerk of the district court and paid the

marriage license fee of five dollars ($5), the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of eighteen (18) years at the time the marriage license is effective, or will have attained the age of sixteen (16) years and has either the consent to the marriage of both parents or his guardian, or judicial approval; and

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

Section 7. Effective date of license. A license to marry becomes effective throughout this state three (3) days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

Section 8. Judicial approval. (1) The district court, after a reasonable effort has been made to notify the parents or guardian of each underaged party, may order the clerk of the district court to issue a marriage license and a marriage certificate form:

(a) to a party aged sixteen (16) or seventeen (17)

years who has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; or

(b) to a party under the age of sixteen (16) years who has the consent of both parents to his marriage, if capable of giving consent, or of his guardian.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

Section 9. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

Section 10. Prohibited marriages. (1) Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between nieces and uncles, and between aunts and nephews, and between first cousins, and between persons, either of whom is feebleminded, are prohibited and void from the beginning, whether the relationship is legitimate or illegitimate.

(2) Children born of a prohibited marriage are legitimate.

Section 11. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity.

(c) a party was under the age of sixteen (16) years and did not have the consent of his parents or guardian and judicial approval or was aged sixteen (16) or seventeen (17) years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsection (1)(a) through (c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for a reason set forth in subsection (1)(a), by either party or by the legal representative of the party who lacked capacity to consent, no later than ninety (90) days after the petitioner obtained knowledge of the described condition;

(b) for the reason set forth in subsection (1)(b), by either party, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(c) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one (1) of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this act relating

to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

Section 12. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (section 10) or declared invalid (section 11). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Section 13. Application. All marriages contracted within this state prior to the effective date of this act, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicil of the parties, are valid in this state.

Section 14. Validity of common law marriage. Common law marriages are not invalidated by this act. Declarations of marriage pursuant to sections 48-130 through 48-132 are not invalidated by this act.

Section 15. Application of the Montana rules of civil procedure to proceedings under this act. (1) The Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of _____ and _____". A custody or support proceeding shall be entitled "In re the (Custody) (Support) of _____".

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

Section 16. Dissolution of marriage--legal separation.

(1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state while a member of the armed services, and that the domicil or military presence has been maintained for ninety (90) days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence

(i) that the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage; and

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of section 19 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or provided for a separate, later hearing to complete these matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

Section 17. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) All proceedings under this act are commenced in the manner provided by the Montana rules of civil procedure.

(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of section 16 exist and that the marriage is irretrieveably broken in that either

(i) the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and that there is no reasonable

prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenace of a spouse; and

(f) the relief sought.

(3) Either or both parties to the marriage may initiate the proceeding.

(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within twenty (20) days after the date of service file a verified response. No decree may be entered until twenty (20) days after the date of service.

(5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(6) The court may join additional parties proper for the exercise of its authority to implement this act.

Section 18. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal

jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) The court may issue a temporary restraining order

without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(4) A response may be filed within twenty (20) days after service of notice of motion or at the time specified in the temporary restraining order.

(5) On the basis of the showing made and in conformity with sections 22 and 23, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(6) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 30; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Section 19. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not

denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of sections 36-201 through 36-205, known as the Montana Conciliation Law.

Section 20. Separation agreement. (1) To promote amicable settlement of disputes between parties to a

marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

Section 21. Disposition of property. (1) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title thereto is in the name of the husband or wife or both. In

making apportionment the court shall consider the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit. In disposing of property acquired prior to the marriage; property acquired by gift, bequest, devise or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including the non-monetary contribution of a homemaker; the extent to which such contributions have facilitated the maintenance of this property and whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote

the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

Section 22. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs, and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child

living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

Section 23. Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child,

and his educational needs; and

(5) the financial resources and needs of the noncustodial parent.

Section 24. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs shall be waived.

Section 25. Payment of maintenance or support to court. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

Section 26. Assignments. The court may order the

person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar ($1) as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Section 27. Costs--attorney's fees. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 28. Decree. (1) A decree of dissolution of

marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than six (6) months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a

former name restored.

Section 29. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

Section 30. Modification and termination of provisions for maintenance, support and property disposition. (1) Except as otherwise provided in subsection (6) of section 20, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a

child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Section 31. Jurisdiction--commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial

evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

Section 32. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

Section 33. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in section 40. The court may award temporary custody under the standards of section 32 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under subsection (a)(ii) or (b) of section 31 is dismissed, any temporary custody order is vacated.

Section 34. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit

counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

Section 35. Investigations and reports. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare department.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's

consent must be obtained if he has reached the age of sixteen (16) unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

Section 36. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be

detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

Section 37. Visitation. (1) [illegible]

(2) [illegible]

Section 38. [illegible]

1 religious training, unless the court after hearing, finds,
2 upon motion by the noncustodial parent, that in the absence
3 of a specific limitation of the custodian's authority, the
4 child's physical health would be endangered or his emotional
5 development significantly impaired.
6 (2) If both parents or all contestants agree to the
7 order, or if the court finds that in the absence of the
8 order the child's physical health would be endangered or his
9 emotional development significantly impaired, the court may
10 order the county welfare department to exercise continuing
11 supervision over the case to assure that the custodial or
12 visitation terms of the decree are carried out.
13 Section 39. Modification. (1) No motion to modify a
14 custody decree may be made earlier than two (2) years after
15 its date, unless the court permits it to be made on the
16 basis of affidavits that there is reason to believe the
17 child's present environment may endanger seriously his
18 physical, mental, moral, or emotional health.
19 (2) If a court of this state has jurisdiction pursuant
20 to the Uniform Child Custody Jurisdiction Act, the court
21 shall not modify a prior custody decree unless it finds,
22 upon the basis of facts that have arisen since the prior
23 decree or that were unknown to the court at the time of
24 entry of the prior decree, that a change has occurred in the
25 circumstances of the child or his custodian, and that the

1 modification is necessary to serve the best interest of the
2 child. In applying these standards the court shall retain
3 the custodian appointed pursuant to the prior decree unless:
4 (a) the custodian agrees to the modification;
5 (b) the child has been integrated into the family of
6 the petitioner with consent of the custodian; or
7 (c) the child's present environment endangers
8 seriously his physical, mental, moral, or emotional health,
9 and the harm likely to be caused by a change of environment
10 is outweighed by its advantages to him.
11 (3) Attorney fees and costs shall be assessed against
12 a party seeking modification if the court finds that the
13 modification action is vexatious and constitutes harassment.
14 Section 40. Affidavit practice. A party seeking a
15 temporary custody order or modification of a custody decree
16 shall submit together with his moving papers an affidavit
17 setting forth facts supporting the requested order or
18 modification and shall give notice, together with a copy of
19 his affidavit, to other parties to the proceeding, who may
20 file opposing affidavits. The court shall deny the motion
21 unless it finds that adequate cause for hearing the motion
22 is established by the affidavits, in which case it shall set
23 a date for hearing on an order to show cause why the
24 requested order or modification should not be granted.
25 Section 41. Application. (1) This act applies to all

proceedings commenced on or after its effective date.

(2) This act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

Section 42. Act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

Section 43. Severability. If any provision of this act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other

provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Section 44. Section 48-130, R.C.M. 1947, is amended to read as follows:

"48-130. Declaration of marriage without solemnization--how made. Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in section ~~48-116~~ 9 of this act must prior to executing the declaration, secure the premarital test certificate required by ~~section 48-134~~ this act, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. Any such declaration of marriage shall substantially contain the following:

1. The names, ages, and residences of the parties;

2. The fact of marriage;

3. Name of father, maiden name of mother, of both parties, and address of each;

4. That both parties are legally competent to enter into the marriage contract.

Such declaration must be subscribed by the parties and attested by at least two (2) witnesses, and formally acknowledged before the clerk of the district court of said

county. Unless all the provisions of this act shall be complied with the marriage shall be deemed invalid."

Section 45. Sections 21-101 through 21-150, 48-101, 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 through 48-203, 48-206 and 48-207, R.C.M. 1947, are repealed.

Section 46. This act is effective January 1, 1976.

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